# *SENATE HEALTH AND WELFARE COMMITTEE*

## *ADMINISTRATIVE RULES REVIEW*

## *Table of Contents - Volume 1*

## *2006 Legislative Session*

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


***16.02.03 - Rules Governing Emergency Medical Services***
Docket No. ***16-0203-0501*** .....3

***16.02.10 - Idaho Reportable Diseases***
Docket No. ***16-0210-0501*** ..... 14

***16.02.24 - Clandestine Drug Laboratory Cleanup***
Docket No. ***16-0224-0501 (New Chapter)*** ..... 65

***16.03.01 - Eligibility for Health Care Assistance for Families and Children***
Docket No. ***16-0301-0501*** ..... 76

***16.03.04 - Rules Governing the Food Stamp Program in Idaho***
Docket No. ***16-0304-0501*** ..... 86

***16.03.05 - Rules Governing Eligibility for Aid to the Aged Blind and Disabled (AABD)***
Docket No. ***16-0305-0501*** .....136
Docket No. ***16-0305-0502*** ..... 141
Docket No. ***16-0305-0503*** ..... 151

***16.03.09 - Rules Governing The Medical Assistance Program***
Docket No. ***16-0309-0502*** .....158
Docket No. ***16-0309-0503*** ..... 164

***16.03.16 - Access to Health Insurance Program***
Docket No. ***16-0316-0501 (New Chapter)*** ..... 169

***16.03.19 - Rules Governing Certified Family Homes***
Docket No. ***16-0319-0501 (Chapter Repeal)*** ..... 183
Docket No. ***16-0319-0502 (Chapter Rewrite)*** ..... 186

***16.04.11 - Rules Governing Developmental Disabilities Agencies***
Docket No. ***16-0411-0501 (Chapter Repeal)*** ..... 228
Docket No. ***16-0411-0502 (Chapter Rewrite)*** .....230

***16.05.03 - Rules Governing Contested Case Proceedings and Declaratory Rulings***
Docket No. ***16-0503-0501*** ..... 295

***16.05.05 - Criminal History and Background Checks in Long Term Care Settings***

Docket No. ***16-0505-0501 (New Chapter)*** .....308

***16.06.01 - Rules Governing Family and Children's Services***
Docket No. ***16-0601-0501*** ..... 315

***16.06.02 - Rules Governing Standards for Child Care Licensing***
Docket No. ***16-0602-0501*** ..... 320

***16.06.08 - Rules and Minimum Standards for DUI Evaluators***
Docket No. ***16-0608-0501*** .....325

***16.06.12 - Rules Governing The Idaho Child Care Program (ICCP)***
Docket No. ***16-0612-0501*** ..... 340

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.03 - RULES GOVERNING EMERGENCY MEDICAL SERVICES

### DOCKET NO. 16-0203-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-1017, Idaho Code and House Bill No. 697, 2004 Legislative Session.

**DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, pages 198 through 205**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no fiscal impact to the state general fund. The money involved is currently in the EMS Bureau's general administrative account and are “dedicated” funds not Idaho General Funds. This new rule will require provider education modules to be added to the training curriculum for EMS agencies. Within the first year, there will be a one time cost, of $5,000 for development of the curriculum and $1,000 for supporting documentation and distribution costs. After that first year, there will be no additional costs. The Department will contract with an Idaho University for this curriculum development.

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

DATED this 9th day of September, 2005.

Sherri Kovach, Program Supervisor
DHW - Administrative Procedures Section
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## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1017, Idaho Code (House Bill No. 697, passed by the 2004 Idaho Legislature, amended this Section).

**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, 2005.

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:

**House Bill No. 697 directs the Board of Health and Welfare to include criteria for "air medical services" provided by EMS personnel at emergency scenes. A new section of rule is being added to this chapter that outlines the clinical and operational factors influencing air medical use and decision making by EMS personnel.**

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

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

**There is no fiscal impact to the general fund. The money involved is currently in the EMS Bureau's general administrative account and is "dedicated" funds not Idaho General Funds. This new rule will require provider education modules to be added to the training curriculum for EMS agencies. There will be a one time cost, within the first year, of $5,000 for development of the curriculum and $1,000 for supporting documentation and distribution costs. After that first year, there would be no additional costs. The Department will contract with an Idaho institution of higher education for this curriculum development.**

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted with pertinent interest groups, Legislators and Department staff to obtain guidance on the content of the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dia Gainor at 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 27th day of June, 2005.

**THE FOLLOWING IS THE TEXT FOR THE PENDING RULE**

**010. DEFINITIONS AND ABBREVIATIONS.**
For the purposes of these rules, the following terms and abbreviations will be used, as defined below: (7-1-80)

**01. Advanced Emergency Medical Technician-Ambulance (AEMT-A)**. An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of an advanced EMT training program, examination, subsequent required continuing training, and recertification. (4-6-05)

**02. Advanced Life Support (ALS)**. The provision of medical care, medication administration and treatment with medical devices which correspond to the knowledge and skill objectives in the EMT-Paramedic curriculum currently approved by the State Health Officer in accordance with Subsection 201.04 of these rules and within the scope of practice defined in IDAPA 22.01.06, "Rules for EMS Personnel," Subsection 011.05, by persons certified as EMT-Paramedics in accordance with these rules. (4-5-00)

**03. Advertise**. Communication of information to the public, institutions, or to any person concerned, by any oral, written, or graphic means including handbills, newspapers, television, radio, telephone directories and billboards. (4-5-00)

**04. Agency**. An applicant for designation or a licensed EMS service seeking designation. (4-5-00)

**05. Air Medical Response**. The deployment of an aircraft licensed as an ambulance to an emergency scene intended for the purpose of patient treatment and transportation. ( )

**0~~5~~6. Ambulance**. Any privately or publicly owned ground vehicle, nautical vessel, fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. (7-1-97)

**0~~6~~7. Ambulance-Based Clinicians**. Licensed Professional Nurses, Advanced Practice Professional Nurses, and Physician Assistants with current licenses from the Board of Nursing or the Board of Medicine, who are personnel provided by licensed EMS services. (4-5-00)

**0~~7~~8. Board**. The Idaho State Board of Health and Welfare. (12-31-91)

**0~~8~~9. Certification**. A credential issued to an individual by the EMS Bureau for a specified period of time indicating that minimum standards corresponding to one (1) or several levels of EMS proficiency have been met. (7-1-97)

**~~09~~10. Certified Personnel**. Individuals who have completed training and successfully passed examinations for training and skills proficiency in one (1) or several levels of emergency medical services. (7-1-97)

**1~~0~~1. Critical Care Transfer (CCT)**. The transportation of a patient with continuous care, monitoring, medication or procedures requiring knowledge or skills not contained within the EMT-Paramedic curriculum approved by the State Health Officer. Interventions provided by EMT-Paramedics are governed by the scope of practice defined in IDAPA 22.01.06, "Rules for EMS Personnel". (4-6-05)

**1~~1~~2. Director**. The Director of the Department of Health and Welfare or designated individual. (12-31-91)

**1~~2~~3. Division**. The Idaho Division of Health, Department of Health and Welfare. (11-19-76)

**1~~3~~4. Emergency**. A medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (4-5-00)

**1~~4~~5. Emergency Medical Services (EMS)**. The services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury. (11-19-76)

**1~~5~~6. EMS Bureau**. The Emergency Medical Services (EMS) Bureau of the Idaho Department of Health and Welfare. (11-19-76)

**1~~6~~7. EMS Standards Manual**. A manual published by the EMS Bureau detailing policy information including EMS education, training, certification, licensure, and data collection. (7-1-97)

**1~~7~~8. Emergency Medical Technician-Ambulance (EMT-A)**. A designation issued to an EMT-B by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of supervised in-field experience. (7-1-97)

**1~~8~~9. Emergency Medical Technician-Basic (EMT-B)**. An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of a basic EMT training program, examination, subsequent required continuing training, and recertification. (7-1-97)

**~~19~~20. Emergency Medical Technician-Intermediate (EMT-I)**. An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of an intermediate training program, examination, subsequent required continuing training, and recertification. (4-6-05)

**2~~0~~1. Emergency Medical Technician-Paramedic (EMT-P)**. An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of a paramedic training program, examination, subsequent required continuing training, and recertification. (7-1-97)

**22. Emergency Scene**. Any setting (including standbys) outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. ( )

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

**24. Ground Transport Time**. The total elapsed time calculated from departure of the ambulance from the scene to arrival of the ambulance at the patient destination. ( )

**2~~1~~5. First Responder**. An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of a first responder training program, examination, subsequent required continuing training, and recertification. (7-1-97)

**2~~2~~6. Licensed EMS Services**. Ambulance services and non-transport services licensed by the EMS Bureau to function in Idaho. (7-1-97)

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

**2~~3~~8. National Registry of Emergency Medical Technicians (NREMT)**. An independent, non-governmental, not for profit organization which prepares validated examinations for the state's use in evaluating candidates for certification. (7-1-97)

**2~~4~~9. Non-Transport**. A vehicle design or organizational configuration which brings EMS personnel or equipment to a location, but does not move any sick or injured person from that location. (7-1-97)

**~~25~~30. Out-of-Hospital**. Any setting outside of a hospital, including inter-facility transfers, in which the provision of EMS may take place. (4-5-00)

**31. Patient Assessment**. The evaluation of a patient by EMS certified personnel intending to provide treatment or transportation to that patient. ( )

**~~26~~32. Physician**. A person licensed by the State Board of Medicine to practice medicine or surgery or osteopathic medicine or surgery in Idaho. (11-17-96)

**~~27~~33. Pre-Hospital**. Any setting (including standbys) outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. (4-5-00)

~~28~~34. **State Health Officer**. The Administrator of the Division of Health. (11-19-76)

~~29~~35. **Transfer**. The transportation of a patient from one (1) medical care facility to another by ambulance. (4-5-00)

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

**401. -- ~~499~~404.(RESERVED).**

**405. STANDARDS FOR THE APPROPRIATE USE OF AIR MEDICAL AGENCIES BY CERTIFIED EMS PERSONNEL AT EMERGENCY SCENES.**

**01. Who Establishes Training Curricula and Continuing Education Requirements for Air Medical Criteria**? The EMS Bureau will incorporate education and training regarding the air medical criteria established in Section 425 of this rule into initial training curricula and required continuing education of certified EMS personnel. ( )

**02. Who Must Establish Written Criteria Guiding Decisions to Request an Air Medical Response**? Each licensed EMS service must establish written criteria, approved by the EMS service medical director, to guide the decisions of the service's certified EMS personnel to request an air medical response to an emergency scene. The criteria will include patient conditions found in Section 415 of these rules. ( )

**03. What Written Criteria is Required for EMS Service Licensure**? Written criteria guiding decisions to request an air medical response will be required for all initial and renewal applications for EMS service licensure for licenses effective on November 1, 2006, or later. ( )

**04. Who Is Responsible for Requesting an Air Medical Response**? Certified EMS personnel en route to or at the emergency scene have the primary responsibility and authority to request the response of air medical services in accordance with the local incident management system and licensed EMS service written criteria. ( )

**05. When Can Certified EMS Personnel Cancel an Air Medical Response**? Certified EMS personnel must complete a patient assessment prior to their cancellation of an air medical response. ( )

**06. Who May Establish Criteria for Simultaneous Dispatch**? The licensed EMS service may establish criteria for simultaneous dispatch for air and ground medical response. Air medical services will not respond to an emergency scene unless requested. ( )

**07. Who Is Responsible for Selecting an Appropriate Air Medical Service**? Selection of an appropriate air medical service is the responsibility of the licensed EMS service. ( )

**a.** The licensed EMS service, through written policy, will establish a process of air medical selection. ( )

**b.** The written policy must direct EMS personnel to honor a patient request for a specific air medical service when the circumstances will not jeopardize patient safety or delay patient care. ( )

**406. -- 414. (RESERVED).**

**415. AIR MEDICAL RESPONSE CRITERIA.**
The need for an air medical request will be determined by the licensed EMS service certified personnel based on their patient assessment and transport time. Each licensed EMS service must develop written criteria based on best medical practice principles. The following conditions must be included in the criteria: ( )

**01. What Clinical Conditions Require Written Criteria**? The licensed EMS service written criteria will provide guidance to the certified EMS personnel for the following clinical conditions: ( )

**a.** The patient has a penetrating or crush injury to head, neck, chest, abdomen, or pelvis; ( )

**b.** Neurological presentation suggestive of spinal cord injury; ( )

**c.** Evidence of a skull fracture (depressed, open, or basilar) as detected visually or by palpation; ( )

**d.** Fracture or dislocation with absent distal pulse; ( )

**e.** A Glasgow Coma Score of ten (10) or less; ( )

**f.** Unstable vital signs with evidence of shock; ( )

**g.** Cardiac arrest; ( )

**h.** Respiratory arrest; ( )

**i.** Respiratory distress; ( )

**j.** Upper airway compromise; ( )

**k.** Anaphylaxis; ( )

**l.** Near drowning; ( )

**m.** Changes in level of consciousness; ( )

**n.** Amputation of an extremity; and ( )

**o.** Burns greater than twenty percent (20%) of body surface or with suspected airway compromise. ( )

**02. What Complicating Conditions Require Written Criteria**? When associated with clinical conditions in Subsection 415.01 of these rules, the following complicating conditions require written guidance for EMS personnel: ( )

**a.** Extremes of age; ( )

**b.** Pregnancy; and ( )

**c.** Patient "do not resuscitate" status as described in Section 400 of these rules.( )

**03. What Operational Conditions Require Written Guidance for an Air Medical Response**? The licensed EMS service written criteria will provide guidance to the certified EMS personnel for the following operational conditions: ( )

**a.** Availability of local hospitals and regional medical centers; ( )

**b.** Air medical response to the scene and transport to an appropriate hospital will be significantly shorter than ground transport time; ( )

**c.** Access to time sensitive medical interventions such as percutaneous coronary intervention, thrombolytic administration for stroke, or cardiac care; ( )

**d.** When the patient's clinical condition indicates the need for advanced life support and air medical is the most readily available access to advanced life support capabilities; ( )

**e.** As an additional resource for a multiple patient incident; ( )

**f.** Remote location of the patient; and ( )

**g.** Local destination protocols. ( )

**416. -- 419. (RESERVED).**

**420. COMMUNICATIONS.**

**01. Who Is Responsible for Requesting an Air Medical Response**? The licensed EMS service will establish a uniform method of communication, in compliance with the local incident management system, to request air medical response. ( )

**02. What Information Must Be Given When Requesting an Air Medical Response**? Requests for an air medical response must include the following information as it becomes available: ( )

**a.** Type of incident; ( )

**b.** Landing zone location or GPS (latitude/longitude) coordinates, or both; ( )

**c.** Scene contact unit or scene incident commander, or both; ( )

**d.** Number of patients if known; ( )

**e.** Need for special equipment; ( )

**f.** How to contact on scene EMS personnel, and ( )

**g.** How to contact the landing zone officer. ( )

**03. Who Is Notified of a Request for an Air Medical Response**? The air medical service will notify the State EMS Communication Center within ten (10) minutes of launching an aircraft in response to a request for emergency services. Notification will include: ( )

**a.** The name of the requesting entity; ( )

**b.** Location of the landing zone; and ( )

**c.** Scene contact unit and scene incident commander, if known. ( )

**04. Who Is Provided the Estimated Time of Arrival at the Specified Landing Zone**? Upon receipt of a request for emergency services, the air medical service will provide the requesting entity with an estimated time to arrival in hours and minutes at the location of the specified landing zone and any changes to that estimated time. ( )

**05. Who Must Confirm Availability of an Air Medical Response**? Upon receipt of a request, the air medical service will inform the requesting entity if the air medical service is not immediately available to respond. ( )

**421. -- 424. (RESERVED).**

**425. LANDING ZONE AND SAFETY.**

**01. Who Is Responsible for Setting Up Landing Zone Procedures**? The licensed EMS service in conjunction with the air medical service(s) must have written procedures for establishment of landing zones. Such procedures will be compatible with the local incident management system. ( )

**02. What Are the Responsibilities of Landing Zone Officers**? The procedures for establishment of landing zones must include identification of Landing Zone Officers with responsibility for the following: ( )

**a.** Landing zone preparation; ( )

**b.** Landing zone safety; and ( )

**c.** Communication between ground and air agencies. ( )

**03. What Training Is Required for Landing Zone Officers**? The licensed EMS service will assure that EMS certified personnel, designated as Landing Zone Officers, have completed training in establishing an air medical landing zone based on the following elements: ( )

**a.** The required size of a landing zone; ( )

**b.** The allowable slope of a landing zone; ( )

**c.** The allowable surface conditions; ( )

**d.** Hazards and obstructions; ( )

**e.** Marking and lighting; ( )

**f.** Landing zone communications; and ( )

**g.** Landing zone safety. ( )

**04. What Is the Deadline for Obtaining Training as Landing Zone Officers**? Current EMS certified personnel, designated as Landing Zone Officers, must complete the required training described in Subsection 425.03 of these rules by June 30, 2007. ( )

**05. What Is the Deadline for Training as a Landing Zone Officer for EMS Recertification**? All EMS certified personnel will complete training described in Subsection 425.03 of these rules as a component of required continuing education for recertification not later than June 30, 2010. ( )

**06. Who Has the Final Decision to Use an Established Landing Zone**? The air medical pilot may refuse the use of an established landing zone. In the event of pilot refusal, the landing zone officer will initiate communications to identify an alternate landing zone. ( )

**426. -- 429. (RESERVED).**

**430. PATIENT DESTINATION.**
The air medical service must have written procedures for determination of patient destination. ( )

**01. Procedures for Destination Protocol and Medical Direction**. The air medical service written procedure will consider the licensed EMS service destination protocol and medical direction received. ( )

**02. Availability of Written Procedures**. The air medical service must make the written procedures available to licensed EMS services that utilize their services. ( )

**03. Determination of Destination Will Honor Patient Preference**. The air medical procedures for determination of destination will honor patient preference if the requested facility is capable of providing the necessary medical care and if the requested facility is located within a reasonable distance not compromising patient care or the EMS system. ( )

**431. -- 434. (RESERVED).**

**435. PERIODIC REVIEW OF EMS SYSTEM DATA.**
The Department of Health and Welfare, EMS Bureau, will periodically review service response data with other EMS system data such as those found in the Trauma Registry maintained in accordance with Title 57, Chapter 20, Idaho Code. ( )

**01. How Often Will the Department Conduct a Review of Air Medical Criteria**? The Idaho EMS Bureau will review the rules, utilization and effectiveness of air medical criteria every three (3) years with the first review being completed no later than June 30, 2009. ( )

**02. What May Be Included During the Review of Air Medical Criteria**? The EMS Bureau review of air medical criteria may include the following: ( )

**a.** Licensed EMS service response data; ( )

**b.** Licensed EMS service guidelines; ( )

**c.** Patient treatment and outcome information; and ( )

**d.** Trauma Registry data. ( )

**03. What Information Must Be Provided During the Review of Air Medical Response Criteria**? Licensed EMS services must provide incident specific patient care related data identified and requested by the EMS Bureau in the review of air medical response criteria. ( )

**04. To Whom Will the EMS Bureau Report the Aggregate Data and Findings**? The EMS Bureau will report the aggregate data and findings from the review of air medical criteria to all licensed EMS services, hospitals, county commissioners, and EMS medical directors. ( )

**436. -- 499. (RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.10 - IDAHO REPORTABLE DISEASES

### DOCKET NO. 16-0210-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-605, 39-906, 39-1003, 39-1603, Idaho Code.

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

**The Department received two comments from the Division of Health of the Department of Health and Welfare requesting the following changes: (1) change the requirement of one (1) negative stool sample to two (2) negative stool samples in Subsection 020.13.d. in accordance with the current literature and (2) Subsection 020.34.c. changed the word "excreting" to "suspected or diagnosed" and "excluded". The Department adopted these changes in its pending rule**.

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 122 through 161**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no anticipated fiscal impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Dr. Leslie Tengelsen at (208) 334-5939.

DATED this 11th day of October, 2005.

Sherri Kovach
Program Supervisor
DHW - Administrative Procedures Section

***DEPARTMENT OF HEALTH AND WELFARE*** ***Docket No. 16-0210-0501***
***Idaho Reportable Diseases*** ***PENDING RULE***

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## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-605, 39-906, 39-1003, 39-1603, 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, 2005.

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:

**Language between this rule chapter and the newly-written Idaho Food Code rules have been aligned to eliminate possible sources of confusion for those who are using both chapters of rules, thereby reducing risk to the public from foodborne infections. The addition of Norovirus to the list of reportable diseases in Idaho allows public health officials to more rapidly recognize and reduce the spread of this infection, which is frequently associated with large outbreaks. The rabies section has been updated to reflect current practices in the field and match the updated incorporated reference. Finally, reporting times for Hepatitis A, Salmonella, Shigella, and Tularemia were shortened to better protect the public's health by improving the response time to these infections by public health officials. This rulemaking also conforms the text with the Department's policy of using "must" and "will" instead of "shall" in order to implement "plain language" and reduce ambiguity**.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done to align the two sets of Idaho rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN**

**COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Leslie Tengelsen at (208) 334-5939.

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, 2005.

DATED this 3rd day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**000. LEGAL AUTHORITY.**
~~*Chapters 6, 9, 10, 16, and 43, Title 39*~~ Sections 39-605, 39-1003, and 39-1603, Idaho Code, grant authority to the Board of Health and Welfare to adopt rules protecting the health of the people of Idaho. Section 39-906, Idaho Code provides for the Director to administer rules adopted by the Board of Health and Welfare. ~~*(5-3-03)*~~(____)

**001. TITLE AND SCOPE.**

**01. Title**. The~~*se*~~ title of these rules ~~*shall be known as Idaho Department of Health and Welfare Rules,*~~ is IDAPA 16.02.10, "Idaho Reportable Diseases". ~~*(4-5-00)*~~(____)

**02. Scope**. These rules contain the official requirements governing the reporting, control, and prevention of reportable diseases and conditions. The purpose of these rules ~~*shall be*~~ is to identify, control, and prevent the transmission of reportable diseases and conditions within Idaho. ~~*(4-5-00)*~~(____)

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations ~~*that apply to*~~ for these rules. ~~*(4-5-00)*~~(____)

**003. ADMINISTRATIVE APPEALS.**
~~*All contested cases shall be*~~ Administrative appeals are governed by the provisions of IDAPA 16.05.03. "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~*(4-5-00)*~~(____)

**004. DEFINITIONS.**
For the purposes of this chapter, the following definitions apply. (12-31-91)

**01. Airborne Precautions**. Methods used to prevent airborne transmission of infectious agents, as described in "Guideline for Isolation Precautions in Hospitals," ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.01*~~ of these rules. ~~*(4-5-00)*~~(____)

**02. Approved Fecal Specimens**. Specimens of feces obtained from the designated person who has not taken any antibiotic orally or parenterally for two (2) days prior to the collection of the fecal specimen. The specimen must be collected and transported to the laboratory in a manner appropriate for the test to be performed. (9-21-92)

**03. Bite or Other Exposure to Rabies**. For the purpose of these rules, bite or bitten ~~*shall*~~ means that the skin of the person or animal has been nipped or gripped, or has been wounded or pierced, including scratches, and includes probable contact of saliva with a break or abrasion of the skin. The term "exposure" ~~*shall*~~ also includes contact of saliva with any mucous membrane. In the case of bats, even in the absence of an apparent bite, scratch, or mucous membrane contact, exposure may have occurred, as described in "Human Rabies Prevention -- United States, 1999" ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.03*~~ of these rules. ~~*(4-5-00)*~~(____)

**04. Board**. The Idaho State Board of Health and Welfare as described in Section 56-1005, Idaho Code. (12-31-91)

**05. Cancers**. Cancers that are designated reportable include the following as described in Section 57-1703, Idaho Code: (4-5-00)

**a.** In-situ or malignant neoplasms, but excluding basal cell and squamous cell carcinoma of the skin unless occurring on a mucous membrane and excluding in-situ neoplasms of the cervix. (4-5-00)

**b.** Benign tumors of the brain, meninges, pineal gland, or pituitary gland. (9-21-92)

**06. Carrier**. A person who can transmit a communicable disease to another person but may not have symptoms of the disease. (12-31-91)

**07. Case**. A person who has been diagnosed as having a specific disease or condition by a physician or other health care provider. The diagnosis may be based on clinical judgment, or on laboratory evidence, or on both criteria. Individual case definitions are described in "Case Definitions for Infectious Conditions Under Public Health Surveillance," ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.02*~~ of these rules. ~~*(4-5-00)*~~(____)

**08. Cohort System**. A communicable disease control mechanism in which cases having the same disease are temporarily segregated to continue to allow supervision and structured attendance in a day care facility. (9-21-92)

**09. Communicable Disease**. A disease which may be transmitted from one (1) person or an animal to another person either by direct contact or through an intermediate host, vector, inanimate object, or other means which may result in infection, illness, disability, or death. (12-31-91)

**10. Contact**. A person who has been exposed to a case or carrier of a communicable disease under circumstances in which he or she could possibly contract the disease or infection. (12-31-91)

**11. Contact Precautions**. Methods used to prevent contact transmission of infectious agents, as described in Garner, JS, et al., "Guideline for Isolation Precautions in Hospitals," ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.01*~~ of these rules. ~~*(4-5-00)*~~(____)

**12. Day Care**. Care and supervision provided for compensation during part of a

twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes as described by Section 39-1102, Idaho Code. (5-3-03)

**13. Department**. The Idaho Department of Health and Welfare. (12-31-91)

**14. District**. Any one of the District Health Departments as established by Section 39-409, Idaho Code. (12-31-91)

**15. District Director**. Any one of the directors of a district health department appointed by the District Board as described in Section 39-413, Idaho Code. (9-21-92)

**16. Droplet Precautions**. Methods used to prevent droplet transmission of infectious agents, as described in Garner, JS, et al., "Guideline for Isolation Precautions in Hospitals," ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.01*~~ of these rules. ~~*(4-5-00)*~~(____)

**17. Extraordinary Occurrence of Illness Including Clusters**. Rare diseases and unusual outbreaks of illness which may be a risk to the public. Illnesses related to drugs, foods, contaminated medical devices, contaminated medical products, illnesses related to environmental contamination by infectious or toxic agents, unusual syndromes, or illnesses associated with occupational exposure to physical or chemical agents may be included in this definition. (5-3-03)

**18. Foodborne Disease Outbreak**. An incident in which two (2) or more persons experience a similar illness after ingestion of a common food~~*, and epidemiological analysis implicates the food as the source of the illness. There are two (2) exceptions: one (1) case of botulism or chemical poisoning constitutes an outbreak*~~. ~~*(9-21-92)*~~(____)

**19. Food ~~*Handler*~~ Employee**. ~~*Any person who handles food utensils or who prepares, processes, handles, or serves food for people other than members of his/her immediate household.*~~ An individual working with unpackaged food, food equipment, or utensils, or food-contact surfaces as defined in IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," the Idaho Food Code. ~~*(12-31-91)*~~(____)

**20. Health Care Facility**. An establishment organized and operated to provide health care to three (3) or more individuals who are not members of the immediate family. (12-31-91)

**21. Health Care Provider**. A person who has direct or supervisory responsibility for the delivery of health care or medical services. This ~~*shall*~~ includes~~*, but not be limited to*~~: licensed physicians, nurse practitioners, physician assistants, nurses, dentists, chiropractors, and administrators, superintendents, and managers of clinics, hospitals, and licensed laboratories. ~~*(9-21-92)*~~(____)

**22. Idaho Food Code**. Idaho Administrative Code that governs food safety, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments". The Idaho Food Code may be found at: www.foodsafety.idaho.gov. (____)

**2~~2~~3. Medical Record**. Hospital or medical records are all those records compiled for the purpose of recording a medical history, diagnostic studies, laboratory tests, treatments, or

rehabilitation. Access ~~*shall*~~ will be limited to those parts of the record which will provide a diagnosis, or will assist in identifying contacts to a reportable disease or condition. Records specifically exempted by statute ~~*shall*~~ are not ~~*be*~~ reviewable. ~~*(9-21-92)*~~(____)

**2~~3~~4. Isolation**. The separation of infected persons, persons who may have been exposed to a highly contagious infectious agent, or of persons suspected to be infected, from other persons to such places, under such conditions, and for such time as will prevent transmission of the infectious agent. The place of isolation ~~*shall*~~ will be designated by the Department or the District Board of Health. ~~*(5-3-03)*~~(____)

**2~~4~~5. Laboratory Director**. A person who has direct responsibility for the operation of a licensed laboratory. (12-31-91)

**2~~5~~6. Livestock**. Cattle, swine, horses, mules, asses, native and non-native ungulates, as provided in Section 25-221, Idaho Code. (9-21-92)

**2~~6~~7. Licensed Laboratory**. A medical diagnostic laboratory which is inspected, licensed, or approved by the Department or licensed according to the provisions of the Clinical Laboratory Improvement Act by the United States Health Care and Financing Administration. Licensed laboratory may also refer to the Idaho State Public Health Laboratory, the branch laboratories, and to the United States Centers for Disease Control and Prevention. (4-5-00)

**2~~7~~8. Licensed Physician**. Any physician who is licensed by the Board of Medicine to practice medicine and surgery in Idaho. (9-21-92)

**2~~8~~9. Licensed Veterinarian**. Any veterinarian licensed by the Board of Veterinary Medicine. (12-31-91)

**~~29~~30. Outbreak**. An unusual rise in the incidence of a disease. An outbreak may consist of just one (1) case. (12-31-91)

**3~~0~~1. Personal Care**. The service provided by one (1) person to another for the purpose of feeding, bathing, dressing, assisting with personal hygiene, changing diapers, changing bedding, and other services involving direct physical contact. (12-31-91)

**3~~1~~2. Quarantine**. The restriction placed on the entrance to and exit from the place or premise where a case or suspected case of a communicable disease exists. The place of quarantine ~~*shall*~~ will be designated by the Department or District Board of Health. ~~*(12-31-91)*~~(____)

**3~~2~~3. Rabies Post-Exposure Prophylaxis (PEP)**. The administration of a rabies vaccine series with or without the antirabies immune-globulin, depending on pre-exposure vaccination status, following a documented or suspected rabies exposure, as described in "Human Rabies Prevention -- United States, 1999", ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.03*~~ of these rules. ~~*(4-5-00)*~~(____)

**3~~3~~4. Rabies Susceptible Animal**. Any animal capable of being infected with the rabies virus. (9-21-92)

**3~~4~~5. Residential Care Facility**. A commercial or non-profit establishment organized and operated to provide a place of residence for three (3) or more individuals who are not members of the same family, but live within the same household. (12-31-91)

**36. Restrict**. To limit the activities of food employees so that there is no risk of transmitting a disease that is transmissible through food. A restricted food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles. A restricted employee may still work at a food establishment as outlined in the Idaho Food Code. For those employed in other occupations described in Section 020 of these rules, under specific control measures for reportable diseases, activities are limited to reduce the risk of disease transmission until such time that they are no longer considered a health risk to others. ( )

**3~~5~~7. Restrictable Disease**. A communicable disease which occurs in a setting where predictable and serious consequences may occur to the public. The determination of whether a disease is restrictable is based upon the specific environmental setting and the likelihood of transmission to susceptible persons. (12-31-91)

**3~~6~~8. Severe Reaction to Any Immunization**. Any serious or life-threatening condition which results directly from the administration of any immunization against a communicable disease. (4-5-00)

**3~~7~~9. Significant Exposure to Blood or Body Fluids**. Significant exposure is defined as a percutaneous injury, contact of mucous membrane or non-intact skin, or contact with intact skin when the duration of contact is prolonged or involves an extensive area, with blood, tissue, or other body fluids as defined in "Public Health Service Guidelines for the Management of Health Care Worker Exposures to HIV and Recommendations for Postexposure Prophylaxis," ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.04*~~ of these rules. ~~*(4-5-00)*~~( )

**~~*38*~~40. Standard Precautions**. Methods used to prevent transmission of all infectious agents, as described in Garner, JS, et al., "Guideline for Isolation Precautions in Hospitals," ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.01*~~ of these rules. ~~*(4-5-00)*~~( )

**~~*39*~~41. State Epidemiologist**. A person employed by the Department to serve as a statewide epidemiologist. (4-5-00)

**4~~0~~2. State Health Officer**. The person appointed by the Director of the Department of Health and Welfare to serve as the statewide health officer. (12-31-91)

**4~~1~~3. Suspected Case**. A person who is diagnosed with or reasonably thought to have a particular disease or condition by a licensed physician or other health care provider. The suspected diagnosis may be based on signs and symptoms, or on laboratory evidence, or both criteria. Suspected cases of some diseases are reportable as described in Section 020 of these rules. ~~*(12-31-91)*~~( )

**4~~2~~4. Vaccination of an Animal Against Rabies**. Vaccination of an animal by a licensed veterinarian with a rabies vaccine licensed or approved for the animal species and administered according to the specifications on the product label or package insert as described in

the "Compendium of Animal Rabies Control, ~~*1999*~~2005", ~~*as defined*~~ incorporated in S~~*ubs*~~ection 005~~*.05*~~ of these rules. ~~*(4-5-00)*~~(  )

**4~~*3*~~5.** **Waterborne Outbreak**. An incident in which two (2) or more persons experience a similar illness after ingestion of water from a common supply and epidemiological analysis implicates the water as the source of the illness. (5-3-03)

**4~~*4*~~6.** **Working Day**. One (1) 8 a.m. to 5 p.m. official state work shift. (9-21-92)

**005. DOCUMENTS INCORPORATED BY REFERENCE.**
The five (5) documents referenced in Subsections 005.01 through 005.05 of these rules are used as a means of further clarifying these rules. These documents are incorporated by reference ~~*pursuant to Section 67-5229, Idaho Code. These documents*~~ and are available at the Idaho State Law Library~~*, the Legislative Council, and the Office of Administrative Rules*~~ or at the Department's main office listed in Section 007 of these rules. ~~*The documents referenced in this chapter are:*~~ ~~*(5-3-03)*~~(  )

**01. "Guideline for Isolation Precautions in Hospitals"**. Garner JS et al. "Guideline for Isolation Precautions in Hospitals". Infect Control Hosp Epidemiol 1996; 17:53-80. (4-5-00)

**02. "Case Definitions for Infectious Conditions Under Public Health Surveillance."** Morbidity and Mortality Weekly Report, May 2, 1997, Vol 46, No. RR-10. Centers for Disease Control and Prevention. (4-5-00)

**03. "Human Rabies Prevention-- United States, 1999."** Morbidity and Mortality Weekly Report, Jan 8, 1999, Vol 48, RR-1. Centers for Disease Control and Prevention. (4-5-00)

**04. "Public Health Service Guidelines for the Management of Health Care Worker Exposures to HIV and Recommendations for Postexposure Prophylaxis."** Mortality and Morbidity Weekly Report, May 15, 1998, Vol 47, RR-7. (4-5-00)

**05. "Compendium of Animal Rabies Control, 200~~*1*~~5."** National Association of State Public Health Veterinarians, Inc., Morbidity and Mortality Weekly Report, ~~*May 25, 2001*~~ March 18, 2005, Vol 5~~*0*~~4, RR 0~~*8*~~3. Centers for Disease Control and Prevention. ~~*(5-3-03)*~~(  )

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

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

**02. Public Records**. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (  )

**007. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

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

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

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

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

**05.** **Internet Website**. The Department's internet website is found at http://www.healthand welfare.idaho.gov. ( )

**~~006~~008. -- 009.(RESERVED).**

**010. REPORTABLE DISEASES AND CONDITIONS.**
A licensed physician who diagnoses, treats or cares for a person with a reportable disease or condition must make a report of such disease or condition to the Department or District as described in these rules. The hospital or health care facility administrator, or his delegated representative, must report in accordance with these rules all persons who are diagnosed, treated, or receive care for a reportable disease or condition in the administrator's facility. Reports need not be made by the hospital administrator, or his representative, if they can assure that the attending physician has previously reported the disease or condition. The physician is also responsible for reporting diseases and conditions diagnosed, or treated by physician assistants, nurse practitioners or others under the physician's supervision. In addition to licensed physicians, reports must also be made by physician assistants, certified nurse practitioners, registered nurses, school health nurses, infection surveillance staff, public health officials, laboratory directors, and coroners. Persons in charge of food establishments must report potential foodborne illnesses. No physician, hospital administrative person, or patient may deny Districts or agents of the Board access to medical records in discharge of their duties in implementing the reportable disease rules. School administrators ~~*shall*~~ must report as indicated in Subsection 025.03.g. of these rules.
~~*(9-21-92)*~~( )

**01.** **Reportable Diseases and Conditions**. The following diseases and conditions are reportable to the Department or District. (11-17-83)

**a.** Diseases. (11-17-83)

i. Acquired immunodeficiency syndrome (AIDS); (11-17-83)

ii. Amebiasis; (11-17-83)

iii. Anthrax; (11-17-83)

iv. Biotinidase deficiency; (5-3-03)

v. Botulism; (11-17-83)

vi. Brucellosis; (11-17-83)

vii. Campylobacteriosis; (11-17-83)

viii. Cancer; (9-21-92)

ix. Chancroid; (11-17-83)

x. Chlamydia trachomatis infections; (4-1-86)

xi. Cholera; (11-17-83)

xii. Congenital hypothyroidism; (5-3-03)

xiii. Cryptosporidiosis; (4-5-00)

xiv. Diphtheria; (11-17-83)

xv. Encephalitis, viral or aseptic; (5-3-03)

xvi. Escherichia coli 0157:H7 and other shiga toxin producing E. coli (STEC); (4-5-00)

xvii. Galactosemia; (5-3-03)

xviii. Giardiasis; (11-17-83)

xix. Hantavirus pulmonary syndrome; (4-5-00)

xx. Haemophilus influenza invasive disease; (9-21-92)

xxi. Hepatitis A; (11-17-83)

xxii. Hepatitis B; (11-17-83)

xxiii. Hepatitis C; (9-21-92)

xxiv. Legionellosis; (11-17-83)

xxv. Leprosy; (11-17-83)

xxvi. Leptospirosis; (11-17-83)

xxvii. Listeriosis; (4-5-00)

xxviii. Lyme Disease; (9-21-92)

xxix. Malaria; (11-17-83)

xxx. Maple syrup urine disease; (5-3-03)

xxxi. Measles (Rubeola); (11-17-83)

xxxii. Meningitis, viral or aseptic; (5-3-03)

xxxiii. Mumps; (11-17-83)

xxxiv. Myocarditis, viral; (4-5-00)

xxxv. Neisseria gonorrhoeae infections; (9-21-92)

xxxvi. Neisseria meningitidis invasive disease; (9-21-92)

xxxvii. Norovirus; ( )

xxxvii~~i~~.Pertussis; (11-17-83)

xxx~~viii~~ix.Phenylketonuria; (5-3-03)

x~~xxix~~l. Plague; (11-17-83)

xli. Pneumocystis carinii pneumonia (PCP); (9-21-92)

xlii. Pneumococcal invasive disease in children less than eighteen (18) years of age; (5-3-03)

xliii. Poliomyelitis; (11-17-83)

xl~~ii~~iv. Psittacosis; (11-17-83)

xl~~i~~v. Q fever; (11-17-83)

xlvi. Rabies (human and animal); (4-5-00)

xlvii. Relapsing fever, tick-borne and louse-borne; (4-5-00)

xlviii. Rocky Mountain spotted fever; (11-17-83)

xl~~vii~~ix. Rubella (including congenital rubella syndrome); (11-17-83)

~~xlix~~l. Salmonellosis (including typhoid fever); (11-17-83)

li. Severe acute respiratory syndrome (SARS); (4-6-05)

lii. Shigellosis; (11-17-83)

liii. Smallpox; (5-3-03)

l~~ii~~iv. Streptococcus pyogenes, Group A, infections which are invasive or result in rheumatic fever; (9-21-92)

l~~i~~v. Syphilis; (11-17-83)

lvi. Tetanus; (11-17-83)

lvii. Transmissible spongiform encephalopathies (TSEs), including Creutzfeldt-Jakob Disease (CJD) and variant CJD (vCJD). (4-6-05)

lviii. Trichinosis; (11-17-83)

l~~vii~~ix. Tuberculosis; (11-17-83)

l~~i~~x. Tularemia; (11-17-83)

lxi. West nile virus infection; (4-6-05)

lxii. Yersinosis. (11-17-83)

**b.** Conditions: (11-17-83)

i. CD-4 lymphocyte counts less than two hundred (200) per cubic millimeter of blood or less than or equal to fourteen percent (14%); (4-5-00)

ii. Extraordinary occurrence of illness, including clusters; (4-5-00)

iii. Food poisoning, foodborne illness, and waterborne illness; (5-3-03)

iv. Hemolytic-uremic syndrome (HUS); (4-5-00)

v. Human Immunodeficiency Virus (HIV) infections including, positive HIV tests: HIV Antibody, HIV Antigen, Human Immunodeficiency Virus isolations, other tests of infectiousness, as specified by the Department; (4-5-00)

vi. Human T-Lymphotropic Virus infections; (4-5-00)

vii. Lead levels of ten (10) micrograms or more per deciliter of whole blood (ug/dl); (9-21-92)

viii. Reye syndrome; (4-5-00)

ix. Severe or unusual reactions to any immunization; (4-5-00)

x. Toxic shock syndrome; (4-5-00)

**02. Form of the Report**. (11-17-83)

**a.** Each report of a reportable disease or condition ~~*shall*~~ must include the identity and address of the attending licensed physician or the person reporting, the diagnosed or suspected disease or condition, the name, current address, telephone number and birth date or age, race, ethnicity, and sex of the individual with the disease or condition, and the date of onset of the disease or condition. ~~*(4-5-00)*~~(  )

**b.** A report of a case or suspected case ~~*shall*~~ may be made to the Department or the District by telephone, mail or fax. ~~*(4-5-00)*~~(  )

**c.** The identification of any organism known to cause a reportable disease or condition listed in Subsection 010.03.d. ~~*shall*~~ of these rules must be reported to the Department or District by the laboratory director or his authorized representative. The report ~~*shall*~~ must include the name (if known) or other identifier of the individual from whom the specimen was obtained, the name and address of the individual's physician or other person requesting the test, and the identity of the organism or other significant test result. ~~*(9-21-92)*~~(  )

**03. When to Report**. (11-17-83)

**a.** Some reportable diseases are considered to be of urgent public health importance, and must be reported to the Department or District immediately, day or night. These diseases include: (11-17-83)

i. Anthrax; (4-5-00)

ii. Botulism; (11-17-83)

iii. Diphtheria; (11-17-83)

iv. Plague; (11-17-83)

v. Rabies in humans; (5-3-03)

vi. Smallpox~~.~~; ~~*(5-3-03)*~~(  )

vii. Tularemia. (  )

**b.** The following reportable diseases and conditions must be reported to the Department or District within one (1) working day after diagnosis: (9-21-92)

i. Brucellosis; (4-5-00)

ii. Biotinidase deficiency; (5-3-03)

iii. Cholera; (9-21-92)

iv. Congenital hypothyroidism; (5-3-03)

v. Escherichia coli O157:H7 and other shiga toxin producing E. coli (STEC); (4-5-00)

vi. Galactosemia; (5-3-03)

vii. Hantavirus pulmonary syndrome; (4-5-00)

viii. Haemophilus influenzae invasive disease; (9-21-92)

ix. Hepatitis A; (9-21-92)

x. Hepatitis B; (9-21-92)

xi. Hemolytic-uremic syndrome (HUS); (4-5-00)

xii. Maple syrup urine disease; (5-3-03)

xiii. Measles; (11-17-83)

xiv. Neisseria meningitidis invasive disease; (4-5-00)

xv. Norovirus. ( )

xvi. Pertussis; (11-17-83)

xvii. Phenylketonuria; (5-3-03)

xviii. Poliomyelitis; (11-17-83)

xv~~ii~~ix. Q fever; (5-3-03)

x~~i~~x. Rabies in animals; (9-21-92)

xxi. Rubella (including congenital rubella syndrome); (11-17-83)

xxii. Salmonellosis (including typhoid fever); (11-17-83)

xxiii. Severe acute respiratory syndrome (SARS); (4-6-05)

xxiv. Shigellosis; ( )

~~*xxiii. Tularemia;* (5-3-03)~~

xx~~i~~v. Extraordinary occurrence of illness including clusters; (4-5-00)

xxvi. Severe or unusual reactions to any immunization; (11-17-83)

xxvii. Food poisoning, foodborne illness, or waterborne illness. (5-3-03)

**c.** The remaining reportable diseases and conditions listed below ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification of a case: ~~*(5-3-03)*~~(  )

i. Acquired immunodeficiency syndrome (AIDS); (9-21-92)

ii. Amebiasis; (9-21-92)

iii. CD-4 lymphocyte counts less than two hundred (200) per cubic millimeter of blood or less than or equal to fourteen percent (14%): (4-5-00)

iv. Campylobacteriosis; (9-21-92)

v. Chancroid; (9-21-92)

vi. Chlamydia trachomatis infections; (9-21-92)

vii. Cryptosporidiosis; (4-5-00)

viii. Encephalitis, viral or aseptic; (5-3-03)

ix. Giardiasis; (9-21-92)

x. Gonococcal infections; (9-21-92)

xi. Hepatitis C; (4-5-00)

xii. Human Immunodeficiency Virus (HIV) infections including, positive HIV tests: HIV Antibody, HIV Antigen, Human Immunodeficiency Virus isolations, other tests of infectiousness, as specified by the Department. (4-5-00)

xiii. Human T-Lymphotropic Virus infections; (4-5-00)

xiv. Lead levels of ten (10) micrograms or more per deciliter of whole blood (ug/dl); (9-21-92)

xv. Legionellosis; (9-21-92)

xvi. Leprosy; (9-21-92)

xvii. Leptospirosis; (9-21-92)

xviii. Listeriosis; (4-5-00)

xix. Lyme Disease; (9-21-92)

xx. Malaria; (9-21-92)

xxi. Meningitis, viral or aseptic; (5-3-03)

xxii. Mumps; (9-21-92)

xxiii. Myocarditis, viral; (4-5-00)

xxiv. Pneumococcal invasive disease in children less than eighteen (18) years of age; (5-3-03)

xxv. Pneumocystis carinii pneumonia (PCP); (9-21-92)

xxvi. Psittacosis; (9-21-92)

xxvii. Relapsing fever, tick-borne or louse-borne; (4-5-00)

xxviii. Reye syndrome; (9-21-92)

xxix. Rocky Mountain spotted fever; (9-21-92)

~~*xxx. Shigellosis; (9-21-92)*~~

xxx~~*i*~~. Streptococcus pyogenes, Group A, infections which are invasive or result in rheumatic fever; (9-21-92)

xxxi~~*i*~~. Syphilis; (9-21-92)

xxxii~~*i*~~. Tetanus; (9-21-92)

xxxi~~*v*~~ii. Transmissible spongiform encephalopathies (TSEs), including Creutzfeldt-Jakob Disease (CJD) and variant CJD (vCJD). (4-6-05)

xxxiv. Trichinosis; (9-21-92)

xxxv~~*i*~~. Toxic shock syndrome; (9-21-92)

xxxvi~~*i*~~. Tuberculosis; (9-21-92)

xxxvii~~*i*~~. West nile virus infection; (4-6-05)

xxx~~*ix*~~viii. Yersiniosis; (9-21-92)

**d.** The laboratory director or his authorized representative ~~*shall*~~ must report the identification of the following organisms or significant serologic results or chemical determinations to the Department or District immediately, day or night. The organisms, serologic

tests, and chemical determinations to be reported include: ~~*(4-5-00)*~~(____)

i. Bacillis anthracis; (4-5-00)

ii. Yersinia pestis; (4-5-00)

iii. Corynebacteria diphtheria; ~~*and*~~ ~~*(4-5-00)*~~(____)

iv. Rabies, human or animal~~.~~; and ~~*(4-5-00)*~~(____)

v. Tularemia. (____)

**e.** The laboratory director or his authorized representative ~~*shall*~~ must report the identification of the following organisms or significant serologic results or chemical determinations to the Department or District within one (1) working day after identification. The organisms, serologic tests, and chemical determinations to be reported include: ~~*(4-5-00)*~~(____)

i. Biotinidase deficiency; (5-3-03)

ii. Bordetella pertussis; (4-5-00)

iii. Brucella species; (4-5-00)

iv. Congenital hypothyroidism; (5-3-03)

v. Escherichia coli 0157:H7 or other shiga-toxin producing E. coli (STEC); (4-5-00)

vi. Francisella tularensis; (5-3-03)

vii. Galactosemia; (5-3-03)

viii. Hantavirus; (4-5-00)

ix. Hepatitis A (____)

x~~*i*~~. Maple syrup urine disease; (5-3-03)

xi. Neisseria meningitidis from CSF or blood; (5-3-03)

xii. Norovirus. (____)

xiii. Phenylketonuria; (5-3-03)

xiv. Salmonella species; (____)

x~~*ii*~~v. Severe acute respiratory syndrome (SARS); (4-6-05)

xvi. Shigella species; (____)

x~~i~~vii. Vibrio cholerae. (4-5-00)

**f.** The laboratory director or his authorized representative must report the identification of, or laboratory findings suggestive of, the presence of the following organisms or conditions to the Department or District within three (3) working days. (4-6-05)

i. CD-4 Lymphocyte Counts below two hundred (200) per cubic millimeter (cu/mm) of blood or less than or equal to fourteen percent (14%); (4-5-00)

ii. Campylobacter species; (4-5-00)

iii. Chlamydia trachomatis; (4-1-86)

iv. Cryptosporidium; (4-5-00)

v. Giardia; (4-5-00)

vi. Haemophilus influenzae from CSF or blood; (11-17-83)

~~*vii. Hepatitis A (IgM antibody);* (11-17-83)~~

vii~~*i*~~. Hepatitis B surface antigen; (11-17-83)

~~*ix*~~xiii. Hepatitis C antibody or antigen; (9-21-92)

ix. Human Immunodeficiency Virus (HIV) tests: positive HIV Antibody, HIV Antigen, Human Immunodeficiency Virus culture, or other tests of infectiousness, as specified by the Department; (4-5-00)

x~~*i*~~. Human T-Lymphotropic Virus positive tests; (4-5-00)

xi. Lead levels of ten (10) micrograms or more per deciliter (ug/dl) of whole blood; (9-21-92)

xii~~*i*~~. Listeria species; (4-5-00)

xi~~*v*~~ii. Mycobacterium tuberculosis complex; (4-5-00)

xiv. Neisseria gonorrhoeae; (11-17-83)

xv~~*i*~~. Plasmodium species; (11-17-83)

~~*xvii. Salmonella species;* (11-17-83)~~

~~*xviii. Shigella species;* (11-17-83)~~

x~~*ix*~~vi. Syphilis tests (positive or reactive USR, RPR, VDRL, FTA, darkfield, others);

(11-17-83)

x~~x~~vii. Transmissible spongiform encephalopathies (TSEs), including Creutzfeldt-Jakob Disease (CJD) and variant CJD (vCJD). (4-6-05)

x~~x~~viii. West nile virus; (4-6-05)

x~~xi~~ix. Yersinia enterocolitica; (11-17-83)

xx~~iii~~. Yersinia pseudotuberculosis; (9-21-92)

**g.** Cancer is to be reported within one hundred and eighty (180) days of its diagnosis or recurrence to the Department or the Department's designated agent or contractor. (4-5-00)

**04. Handling of Reports by the Department and Districts**. (9-21-92)

**a.** The Department and the District ~~*shall*~~ will exchange reported information within one (1) working day by telephone on any reported case or suspected case of the following reportable diseases or conditions: ~~*(9-21-92)*~~(  )

i. Anthrax; (4-5-00)

ii. Botulism; (11-17-83)

iii. Brucellosis; (5-3-03)

iv. Cholera; (11-17-83)

v. Diphtheria; (11-17-83)

vi. E. coli O157:H7 and other shiga toxin producing E. coli (STEC); (4-5-00)

vii. Food poisoning, foodborne illness, or waterborne illness; (5-3-03)

viii. Hantavirus pulmonary syndrome; (4-5-00)

ix. Haemophilus influenzae invasive disease; (9-21-92)

x. Measles; (11-17-83)

xi. Neisseria meningitidis invasive disease; (9-21-92)

xii. Pertussis; (11-17-83)

xiii. Plague; (11-17-83)

xiv. Poliomyelitis; (11-17-83)

xv. Rabies in humans or animals; (4-5-00)

xvi. Rubella (including congenital rubella syndrome); (11-17-83)

xvii. Salmonella typhi infection; (11-17-83)

xviii. Severe acute respiratory syndrome (SARS); (4-6-05)

xix. Smallpox; (5-3-03)

xx. Syphilis; (11-17-83)

xxi. Tularemia; (5-3-03)

xxii. Extraordinary occurrence of illness including clusters; (4-5-00)

xxiii. Severe or unusual reaction to any immunization. (11-17-83)

**b.** The District ~~*shall*~~ must notify the Department no later than weekly of all other cases of reportable diseases and conditions not specified in Subsection 010.04.a. of these rules. ~~*(9-21-92)*~~(____)

**c.** No employee of the Department or District ~~*shall*~~ may disclose the identity of persons named in disease reports except when necessary for the purpose of administering the public health laws of this state. ~~*(11-17-83)*~~(____)

**011. TESTING FOR CERTAIN REPORTABLE DISEASES WITHOUT PRIOR CONSENT.**

A physician may order blood or body fluid tests for hepatitis viruses, malaria, syphilis, or the human immunodeficiency virus (HIV) when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (Section 39-~~*4303A*~~4504, Idaho Code) ~~*(9-21-92)*~~(____)

***(BREAK IN CONTINUITY OF SUBSECTIONS)***

**020. SPECIFIC CONTROL MEASURES FOR REPORTABLE DISEASES.**

**01. Acquired Immune Deficiency Syndrome (AIDS)**. (9-21-92)

**a.** Each case of AIDS meeting the current case definition established by the Centers for Disease Control and Prevention ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Positive laboratory tests for HIV Antibody, HIV Antigen (protein or nucleic acid), HIV culture or other tests that indicate prior or existing HIV infection or CD-4 lymphocyte counts

below two hundred (200) per cubic millimeter (cu/mm) of blood must be reported. (4-5-00)

**c.** Each report of a case of AIDS ~~*shall*~~ must be investigated to obtain specific clinical information, to identify possible sources, risk factors, and contacts. Other manifestations of HIV infection as defined by the Centers for Disease Control and Prevention may be investigated. ~~*(4-5-00)*~~(____)

**d.** A physician may order blood tests for the human immunodeficiency virus (HIV) when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (9-21-92)

**02. Amebiasis**. (11-17-83)

**a.** Each case of amebiasis ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** A preliminary investigation of each case ~~*shall*~~ must be performed to determine if the case is employed as a food ~~*handler*~~ employee, provides personal care at a health care or day care facility, or is a child attending a day care facility. ~~*(11-17-83)*~~(____)

**c.** Symptomatic persons excreting Entamoeba histolytica are restricted from working as food employees in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

**d.** Members of the household in which there is a case of amebiasis may not work as a food employee unless approved by the Department or District and provided that they are asymptomatic and at least one (1) approved fecal specimen is found to be negative on culture by a licensed laboratory. (____)

~~**c**~~**e.** Persons excreting Entamoeba histolytica ~~*shall not work as food handlers and shall*~~ must not attend day care facilities while incontinent and must not engage in any occupation in which they provide personal care to children in day care facilities or to persons confined to health care facilities unless special exemption is made by the Department or authorized representative of the Department. ~~*(11-17-83)*~~(____)

i. This restriction may be rescinded if an effective therapeutic regimen has been completed ~~*and/*~~or at least two (2) approved fecal specimens collected at least twenty-four (24) hours apart fail to show Entamoeba histolytica upon testing by a licensed laboratory. ~~*(9-21-92)*~~(____)

ii. ~~*Any member of a household in which there is a case of amebiasis may engage in any of the above occupations at the discretion of the Department provided at least one (1) approved fecal specimen is negative for ova and parasites on examination by a licensed laboratory.*~~ Members of the household in which there is a case of amebiasis may not engage in any of the above occupations unless approved by the Department or District and provided that they are asymptomatic and at least one (1) approved fecal specimen is found to be negative on culture by a licensed laboratory. ~~*(9-21-92)*~~(____)

~~***d.*** *Fecally incontinent persons who are excreting Entamoeba histolytica shall not attend day care facilities unless special exemption is made by the Department or authorized representative of the Department.* *(9-21-92)*~~

**03. Anthrax**. (11-17-83)

**a.** Each case or suspected case of anthrax in humans ~~*shall*~~ must be reported to the Department or District by telephone at the time of identification, day or night. ~~*(4-5-00)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ must be investigated to confirm the diagnosis, to determine the extent of the outbreak, and to identify the source of infection. Any identified or suspected source of infection ~~*shall*~~ must be reported to the Department which ~~*shall*~~ will notify the Idaho Department of Agriculture. ~~*(11-17-83)*~~(____)

**04. Botulism**. (11-17-83)

**a.** Each case or suspected case of botulism ~~*shall*~~ must be reported to the Department or District at the time of identification, day or night. ~~*(11-17-83)*~~(____)

**b.** An investigation of each case or suspected case of botulism ~~*shall*~~ will be performed to confirm the diagnosis, to determine if other persons have been exposed to botulinum toxins, and to identify the source of the disease. ~~*(9-21-92)*~~(____)

**05. Brucellosis**. (11-17-83)

**a.** Each case of brucellosis ~~*shall*~~ must be reported to the Department or District within one (1) working day of the identification. ~~*(4-5-00)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify the source of the infection. Any identified or suspected source of infection ~~*shall*~~ will be reported to the Department, which ~~*shall*~~ will notify the Idaho Department of Agriculture. ~~*(9-21-92)*~~(____)

**06. Campylobacteriosis**. (11-17-83)

**a.** Each case of campylobacteriosis ~~*shall*~~ must be reported to Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** An investigation of each case ~~*shall*~~ will be performed to determine the extent of the outbreak and to identify the source of the infection. ~~*(11-17-83)*~~(____)

**c.** Symptomatic persons excreting Campylobacter are restricted from working as food employees in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

~~**e**~~**d.** Persons excreting Campylobacter spp. ~~*shall*~~ must not ~~*work as food handlers*~~ attend day care facilities while incontinent or provide personal care in day care, custodial institutions, or

medical facilities unless exemption is obtained from the Department or District. This restriction will be rescinded once asymptomatic, unless hygienic practices are insufficient and the person remains culture-positive. In that case, before returning to work or day care they must provide~~d~~ at least two (2) approved fecal specimens, collected at least twenty-four (24) hours apart, that fail to show Campylobacter ~~*spp.*~~ upon testing by a licensed laboratory. ~~*(4-5-00)*~~(____)

~~***d.*** *Fecally incontinent persons who are excreting Campylobacter spp. shall not attend day care facilities unless exemption is made by the Department.* *(4-5-00)*~~

**07. Cancer**. (11-17-83)

**a.** The following neoplasms are designated as reportable to the cancer data registry of Idaho within one hundred and eighty (180) days of diagnosis or recurrence: (4-5-00)

i. Each in-situ or malignant neoplasm diagnosed by histology, radiology, laboratory testing, clinical observation, autopsy, or suggested by cytology, but excluding basal cell and squamous cell carcinoma of the skin unless occurring on a mucous membrane and excluding in-situ neoplasms of the cervix is reportable. (4-5-00)

ii. Benign neoplasms are reportable if occurring in the brain, meninges, pineal gland, or pituitary gland. (9-21-92)

**b.** The use of the words “apparently,” “compatible with,” “consistent with,” “favor,” “most likely,” “presumed,” “probable,” “suspected,” “suspicious,” or “typical” is sufficient to make a case reportable. (9-21-92)

**c.** The use of the words “questionable,” “possible,” “suggests,” “equivocal,” “approaching,” and “rule out” is not sufficient to make a case reportable. (9-21-92)

**d.** Each case must be reported by patient's name, demographic information, date of diagnosis, primary site, metastatic sites, histology, stage of disease, initial treatments, subsequent treatment, and survival time. (9-21-92)

**e.** Every private, federal, or military hospital, pathology laboratory, or physician providing a diagnosis and/or treatment related to a reportable cancer is responsible for reporting or furnishing cancer-related data, including annual follow-up, to the cancer data registry. (5-3-03)

**f.** All data reported to the cancer data registry ~~*shall*~~ will be available for use in aggregate form for epidemiologic analysis of the incidence, prevalence, survival, and risk factors associated with Idaho's cancer experience. Disclosure of confidential information for research projects must comply with the cancer data registry's confidentiality policies, as well as the Idaho Department of Health and Welfare's Rules, IDAPA 16.05.01, “Use and Disclosure of Department Records”. ~~*(9-21-92)*~~(____)

**08. Chancroid**. (11-17-83)

**a.** Each case of chancroid ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** Each person diagnosed with chancroid ~~*shall be*~~ is required to inform their sexual contacts that they have been exposed to a venereal disease, or provide specific information so public health officials may locate such contacts, so the contacts can be examined and treated (Section 39-605, Idaho Code). ~~*(11-17-83)*~~(____)

**c.** Each case or suspected case of chancroid ~~*shall*~~ will be investigated by a representative of the Department or District after notification has been received. ~~*(4-5-00)*~~(____)

**09. Chlamydia Trachomatis Infections**. (9-21-92)

**a.** Each case of Chlamydia trachomatis infection ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each person diagnosed with Chlamydia trachomatis pelvic inflammatory disease ~~*shall*~~ will be investigated to determine the extent of the contact follow-up required.~~*(4-5-00)*~~(____)

**c.** Cases of Chlamydia trachomatis ophthalmia neonatorum in health care facilities ~~*shall*~~ will be placed under contact precautions. ~~*(4-5-00)*~~(____)

**d.** Prophylaxis against Chlamydia trachomatis ophthalmia neonatorum is required in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 12, "Rules Governing Procedures and Testing To Be Performed on Newborn Infants". (9-21-92)

**10. Cholera**. (9-21-92)

**a.** Each case or suspected case of cholera ~~*shall*~~ must be reported to the Department or District by telephone within one (1) working day. ~~*(9-21-92)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, and to identify contacts, carriers, and the source of the infection. ~~*(11-17-83)*~~(____)

**c.** Persons in health care facilities who have cholera ~~*shall*~~ will be placed under contact precautions. ~~*(4-5-00)*~~(____)

**d.** Symptomatic persons excreting Vibrio cholerae are restricted from working as food employees in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

~~*d*~~**e.** Persons excreting Vibrio cholerae ~~*shall*~~ must not ~~*work as food handlers,*~~ attend day care facilities while incontinent and ~~*shall*~~ must not engage in any occupation ~~*which*~~ that provides personal care to children in day care facilities or to persons confined to health care or residential facilities while in a communicable form unless an exemption is obtained from the Department or District. ~~*(11-17-83)*~~(____)

~~*e*~~**f.** Members of the household in which there is a case of cholera may not engage in any of the above occupations unless approved by the Department, or District and provided that

they are asymptomatic and at least one (1) approved fecal specimen is found to be negative on culture by a licensed laboratory. (9-21-92)

~~***f.*** *Fecally incontinent persons who are excreting Vibrio cholerae shall not attend day care facilities.* *(9-21-92)*~~

**11. Cryptosporidiosis**. (4-5-00)

**a.** Each case of cryptosporidiosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** An investigation of each case ~~*shall*~~ will be performed to determine the extent of the outbreak and to identify the source of the infection. ~~*(4-5-00)*~~(____)

**c.** Symptomatic persons excreting Cryptosporidium parvum are restricted from working as food employees in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

~~**e**~~**d.** Persons ~~*with*~~ excreting Cryptosporidium ~~*diarrheal illness shall*~~ parvum must not ~~*work as food handlers*~~ attend day care facilities while incontinent or provide personal care in day care facilities, custodial institutions, or medical facilities unless exemption is obtained from the Department or District. This restriction will be rescinded provided at least two (2) approved fecal specimens collected at least twenty-four (24) hours apart fail to show Cryptosporidium upon testing by a licensed laboratory or twenty-four (24) hours after diarrhea has ceased. ~~*(4-5-00)*~~(____)

~~***d.*** *Fecally incontinent persons who are excreting Cryptosporidium shall not attend day care facilities unless exemption is made by the Department.* *(4-5-00)*~~

**12. Diphtheria**. (11-17-83)

**a.** Each case or suspected case of diphtheria ~~*shall*~~ must be reported to the Department or District by telephone immediately, day or night, upon identification. ~~*(11-17-83)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to determine if illness is caused by a toxigenic strain of Corynebacterium diphtheriae, to determine the extent of the outbreak, and to identify contacts, carriers, and the source of the infection. ~~*(11-17-83)*~~(____)

**c.** Cases of oropharyngeal toxigenic diphtheria in health care facilities ~~*shall*~~ will be placed under droplet precautions. The Department or authorized representative of the Department may rescind this isolation requirement after two (2) cultures of the nose and two (2) cultures from the throat, taken at least twenty-four (24) hours apart and at least twenty-four (24) hours after the completion of antibiotic therapy, fail to show toxigenic Corynebacterium diphtheriae upon testing by a licensed laboratory. ~~*(4-5-00)*~~(____)

**d.** Cases of cutaneous toxigenic diphtheria ~~*shall*~~ will be placed under contact precautions. The Department or authorized representative of the Department may rescind these precautions after two (2) cultures from the wound fail to show toxigenic Corynebacterium

diphtheriae upon testing by a licensed laboratory. ~~*(4-5-00)*~~(____)

**e.** Contacts of cases of toxigenic diphtheria ~~*shall*~~ will be offered immunization against diphtheria. ~~*(11-17-83)*~~(____)

**f.** Cases and ~~*C*~~contacts ~~*shall be*~~ are restricted from working as food ~~*handlers*~~ employees, working in health care facilities, or residential facilities, or from attending or working in day care facilities or schools until they are determined not to be carriers by means of a nasopharyngeal culture or culture of other site suspected to be infected. This restrictions may be rescinded by the Department or authorized representative of the Department. ~~*(11-17-83)*~~(____)

**13. Escherichia coli (E. coli) 0157:H7 and Other Shiga Toxin Producing E. coli (STEC).** (4-5-00)

**a.** Each case of infection with E. coli 0157:H7 and other STEC ~~*shall*~~ must be reported to the Department or District within one (1) working day of the identification. ~~*(4-5-00)*~~(____)

**b.** A preliminary investigation of each case ~~*shall*~~ will be performed to determine if the person is employed as a food ~~*handler*~~ employee, provides personal care at a health care or day care facility, or is a child attending a day care facility. The investigation ~~*shall*~~ determines the extent of the outbreak and identif~~*y*~~ies the most likely source of the infection. ~~*(9-21-92)*~~(____)

**c.** Food employees excreting E. coli O157:H7 and other STEC must be managed in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

~~*e*~~**d.** Persons who are excreting E. coli 0157:H7 and other STEC may not attend day care facilities while incontinent or provide personal care to children in day care facilities or to persons in health care facilities ~~*or work as food handlers*~~ while the disease is present in a communicable form without the approval of the Department or ~~*the*~~ District. ~~*One*~~ *Two* (~~*1*~~*2*) negative fecal specimens for E. coli 0157:H7 and other STEC is sufficient to remove restrictions ~~*on personnel*~~. ~~*(4-5-00)*~~(____)

~~***d.*** *Fecally incontinent persons who are excreting E. coli 0157:H7 and other STEC may not attend day care facilities unless exemption is made by the Department or District. One (1) negative fecal specimen for E. coli 0157:H7 and other STEC is sufficient to remove day care attendance restrictions.* *(4-5-00)*~~

**14. Giardiasis**. (11-17-83)

**a.** Each case of giardiasis ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** A preliminary investigation of each case ~~*shall*~~ will be performed to determine if the person is employed as a food ~~*handler*~~ employee, provides personal care at a health care or day care facility, or is a child attending daycare facility. The preliminary investigation ~~*shall*~~ also determines the water sources used by the person with giardiasis~~.~~, ~~*The investigation shall determine*~~ the extent of the outbreak, and ~~*identify*~~ the most likely source of the infection.

~~*(11-17-83)*~~(____)

**c.** Symptomatic persons who are excreting Giardia lamblia are restricted from working as food employees in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

~~**e**~~**d.** Persons with diarrhea who are excreting Giardia lamblia may not attend day care while incontinent or provide personal care to children in day care facilities or to persons in health care facilities ~~*or work as food handlers*~~ while the disease is present in a communicable form or until ~~*two (2) days*~~ of therapy ~~*have*~~ has been completed. Asymptomatic persons may provide these services or attend day care with specific approval of the Department or District. ~~*(4-5-00)*~~(____)

~~***d.*** *Fecally incontinent persons with diarrhea who are excreting Giardia lamblia may not attend day care facilities. Asymptomatic children who are excreting Giardia may attend after investigation is made, hygiene of the facility is determined adequate, and an exemption is made by the Department.* *(4-5-00)*~~

**15. Hantavirus Pulmonary Syndrome**. (4-5-00)

**a.** Each case of acute hantavirus infection manifesting as the hantavirus pulmonary syndrome, ~~*will*~~ must be reported to the Department or District within one (1) day of identification. ~~*(4-5-00)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, determine environmental risk factors leading to infection, and determine any other at-risk individuals. ~~*(4-5-00)*~~(____)

~~***c.*** *The extended CDC case investigation and environmental assessment forms shall be completed in a timely manner.* *(4-5-00)*~~

**16. Haemophilus Influenzae Invasive Disease**. (9-21-92)

**a.** Each case of invasive Haemophilus influenzae invasive disease, including but not limited to meningitis, septicemia, bacteremia, epiglottitis, pneumonia, osteomyelitis and cellulitis, ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(9-21-92)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, to identify contacts, and to determine the need for antimicrobial prophylaxis of close contacts. ~~*(11-17-83)*~~(____)

**c.** Any person who is diagnosed with a disease caused by invasive Haemophilus influenzae ~~*shall*~~ must not provide personal care to children attending a day care facility, or be engaged in any occupation where there is direct contact with students in a private, parochial, or public school as long as the disease is in a communicable form. ~~*(11-17-83)*~~(____)

**d.** Any person who is diagnosed with a disease caused by invasive Haemophilus influenzae ~~*shall*~~ must not attend a day care facility, or a private, parochial, or public school as long

as the disease is in a communicable form. ~~*(11-17-83)*~~(____)

**17. Hemolytic Uremic Syndrome (HUS).** (4-5-00)

**a.** Each case of HUS ~~*shall*~~ must be reported to the Department or District within one (1) working day. ~~*(4-5-00)*~~(____)

**b.** Each case of HUS ~~*shall*~~ will be investigated to confirm the diagnosis, determine the etiologic agent including E. coli O157:H7, non-O157 shiga-toxin producing E. coli, other enteric pathogens, and determine the source of infection. ~~*(4-5-00)*~~(____)

**18. Hepatitis A.** (9-21-92)

**a.** Each case or suspected case of hepatitis A ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(9-21-92)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis, to identify contacts, to determine the need for immune serum globulin (gamma globulin), and to identify possible sources of the infection so subsequent cases may be prevented. ~~*(11-17-83)*~~(____)

**c.** Food employees with hepatitis A must be managed in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

**d.** Any unvaccinated member of the household in which there is a case of hepatitis A must not work as a food employee unless exemption is obtained from the Department or District. (____)

~~**c**~~**e.** Persons with hepatitis A in health care facilities ~~*shall*~~ must be placed under contact precautions as long as the disease is present in a communicable form. ~~*(4-5-00)*~~(____)

~~**d**~~**f.** Persons with hepatitis A ~~*shall be restricted from working as a food handler and shall*~~ must not engage in any occupation in which he/she provides personal care to children in a day care facility or to persons who are confined to health care or residential care facilities while in a communicable state. ~~*(11-17-83)*~~(____)

i. The Department or authorized representative of the Department may rescind this restriction when the illness is considered no longer to be in a communicable stage. (11-17-83)

ii. Any unvaccinated member of the household in which there is a case of hepatitis A may not engage in any of the above mentioned occupations unless exemption is obtained from the Department or District. (4-5-00)

iii. A specific test for recent hepatitis A infection (IgM antiHAV) ~~*shall*~~ should be performed by a licensed laboratory on all food ~~*handlers*~~ employees suspected of having hepatitis A. ~~*(9-21-92)*~~(____)

~~e~~**g.** Children who have hepatitis A ~~*shall*~~ must not attend nurseries or day care facilities until the disease is no longer communicable as determined by a licensed physician, or unless exemption is made by the Department or District. ~~*(9-21-92)*~~(____)

~~*f*~~**h.** A physician may order blood tests for hepatitis A when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (5-16-90)

**19. Hepatitis B**. (9-21-92)

**a.** Each case of hepatitis B ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(9-21-92)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, to identify contacts and carriers, to determine the need for prophylaxis with immune globulins, to determine the need for hepatitis B vaccine, to determine the exposure of any pregnant women, and to identify possible sources of the infection so subsequent cases can be prevented. ~~*(9-21-92)*~~(____)

**c.** The carrier status of all persons diagnosed with hepatitis B ~~*shall*~~ will be determined six (6) months after the initial diagnosis is established. ~~*(11-17-83)*~~(____)

i. The carrier status ~~*shall*~~ will be determined by the presence of hepatitis B surface antigen (HBsAG) in blood obtained at least six (6) months after the initial diagnosis of hepatitis B. ~~*(9-21-92)*~~(____)

ii. The test for hepatitis B surface antigen (HBsAg) ~~*shall*~~ must be performed by a licensed laboratory. ~~*(11-17-83)*~~(____)

iii. All persons who are carriers of hepatitis B ~~*shall*~~ must be reported to the Department or District by their physician at the time of determination for inclusion in the hepatitis B carrier registry. ~~*(9-21-92)*~~(____)

**d.** A physician may order blood tests for hepatitis B when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (5-16-90)

**20. Hepatitis C**. (9-21-92)

**a.** Each case of hepatitis C ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each reported case of hepatitis C ~~*shall*~~ will be investigated to confirm the diagnosis, and to identify possible sources of the infection so subsequent cases may be prevented. ~~*(4-5-00)*~~(____)

**c.** A physician may order blood tests for hepatitis C when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (9-21-92)

**21. Human Immunodeficiency Virus (HIV) Infection**. (4-5-00)

**a.** Each case of HIV infection ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Positive laboratory tests for HIV Antibody, HIV Antigen (protein or nucleic acid), HIV culture or other tests that indicate prior or existing HIV infection must be reported as described in Subsection 010.03.d.i. of these rules. ~~*(4-5-00)*~~(____)

**c.** Each reported case of HIV infection ~~*shall*~~ will be investigated to obtain specific clinical information, to identify possible sources, risk factors, and contacts. Other manifestations of HIV infection as defined by the Centers for Disease Control and Prevention may be investigated. ~~*(4-5-00)*~~(____)

**d.** A physician may order blood tests for the HIV when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (4-5-00)

**22. Human T-Lymphotropic Virus (HTLV) Positive Tests**. (4-5-00)

**a.** HTLV infections (I and II) ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** Each reported case of HTLV infection may be investigated to determine the source of infection and evaluate risk factors. (4-5-00)

**23. Legionellosis**. (11-17-83)

**a.** Each case of legionellosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** Each reported case of legionellosis ~~*shall*~~ will be investigated to confirm the diagnosis, and to identify possible sources of the infection so subsequent cases may be prevented. ~~*(4-5-00)*~~(____)

**c.** When two (2) or more cases occur within thirty (30) days of each other, an investigation ~~*shall*~~ will be conducted to identify a common environmental source, and to identify ways to prevent further infections. ~~*(4-5-00)*~~(____)

**24. Leprosy**. (11-17-83)

**a.** Each case of leprosy ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** Each reported case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify all household or other close contacts. ~~*(11-17-83)*~~(____)

**c.** All household or close contacts of a new case ~~*shall*~~ must be examined by a licensed physician for signs of leprosy. Household contacts and patients in remission ~~*shall*~~ must be registered with the Department and undergo periodic medical examinations every six (6) to twelve (12) months for five (5) years. ~~*(11-17-83)*~~(____)

**25. Leptospirosis**. (11-17-83)

**a.** Each case of leptospirosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify possible sources of the infection. Any identified or suspected source of infection ~~*shall*~~ will be reported to the Department, which ~~*shall*~~ will notify the Idaho Department of Agriculture if animals are involved. ~~*(11-17-83)*~~(____)

**26. Listeriosis**. (4-5-00)

**a.** Each case of listeriosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify possible sources of the infection and extent of the outbreak. ~~*(4-5-00)*~~(____)

**27. Lyme Disease**. (9-21-92)

**a.** Each case of Lyme Disease ~~*shall*~~ must be reported to the Department or District within three (3) working days of the identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify possible sources of the infection. Any identified or suspected source of infection ~~*shall*~~ will be reported to the Department, which ~~*shall*~~ will notify the Idaho Department of Agriculture if animals are involved. ~~*(9-21-92)*~~(____)

**28. Malaria**. (9-21-92)

**a.** Each case of malaria ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to determine the type and the source of the infection. ~~*(9-21-92)*~~(____)

**c.** If transmission may have occurred in Idaho, an entomologic investigation ~~*shall*~~ will be performed by the Department or District to determine the extent of mosquito activity, and to institute control measures if endemic transmission has been determined. ~~*(4-5-00)*~~(____)

**d.** A physician may order blood tests for malaria when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body

fluids by a person providing emergency or medical services. (5-16-90)

**29. Measles**. (9-21-92)

**a.** Each case or suspected case of measles (rubeola) ~~*shall*~~ must be reported to the Department or District by telephone within one (1) working day after identification. ~~*(9-21-92)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated promptly to confirm the diagnosis, to determine the extent of the outbreak, to identify the source of the infection, and to identify susceptible contacts. ~~*(11-17-83)*~~(____)

**c.** Cases or suspected cases of measles in health care facilities ~~*shall*~~ must be placed under airborne precautions until the fifth day after the onset of rash. ~~*(4-5-00)*~~(____)

**d.** A person who is diagnosed as having measles ~~*shall*~~ must not engage, as long as the disease is in a communicable stage, in any occupation in which there is direct contact with children. ~~*(4-5-00)*~~(____)

**e.** A child diagnosed with measles ~~*shall*~~ must not attend a day care facility as long as the disease is in a communicable stage. ~~*(11-17-83)*~~(____)

**f.** Any person, regardless of age, ~~*shall*~~ must not attend a private, parochial, charter, or public school as long as the disease is in a communicable stage. ~~*(4-5-00)*~~(____)

**g.** In the event of an outbreak, susceptible children must be excluded from day care facilities and schools until adequate immunization is obtained, or the threat of further spread is contained (Section 33-512, Idaho Code). (9-21-92)

**30. Mumps**. (9-21-92)

**a.** Each case of mumps ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case may be investigated to determine the immunization history or if there is an unusual cause for an outbreak. (9-21-92)

**c.** Each case of mumps ~~*shall*~~ must be restricted from school or work for nine (9) days after onset of parotid swelling. ~~*(4-5-00)*~~(____)

**31. Myocarditis, Viral**. (4-5-00)

**a.** Each case of diagnosed or suspected viral myocarditis ~~*shall*~~ must be reported within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, to identify clusters or outbreaks of the infection, and to identify the agent or source of the infection. ~~*(4-5-00)*~~(____)

**32. Neisseria Gonorrhoeae Infections**. (9-21-92)

**a.** Each case of Neisseria gonorrhoeae infection ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each person diagnosed with urethral, cervical, oropharyngeal, or rectal gonorrhea ~~*shall be*~~ is required to inform their sexual contacts, or provide sufficient information so public health officials may locate such contacts, advise that they have been exposed to a sexually transmitted infection (venereal disease) and should seek examination and treatment. ~~*(4-5-00)*~~(____)

**c.** Cases of gonococcal ophthalmia neonatorum in health care facilities ~~*shall*~~ must be placed under wound and skin precautions. ~~*(11-17-83)*~~(____)

**d.** Prophylaxis against gonococcal ophthalmia neonatorum ~~*shall be*~~ is as described in Idaho Department of Health and Welfare Rules, IDAPA 16.02.12, "Rules Governing Procedures and Testing To Be Performed on Newborn Infants". ~~*(11-17-83)*~~(____)

**33. Neisseria Meningitidis Invasive Disease**. (9-21-92)

**a.** Each case of invasive disease caused by Neisseria meningitidis, including but not limited to meningitis and septicemia ~~*shall*~~ must be reported to the Department or District by telephone within one (1) working day of identification. ~~*(4-5-00)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, to identify contacts, and to determine the need for antimicrobial prophylaxis and/or immunization of close contacts. ~~*(9-21-92)*~~(____)

**c.** Any person who is diagnosed with a disease caused by Neisseria meningitidis ~~*shall*~~ must not provide personal care to children attending a day care facility, or engage in any occupation where there is direct contact with students in private, parochial, charter, or public schools as long as the disease is present in a communicable form. ~~*(4-5-00)*~~(____)

**d.** Any person who is diagnosed with a disease caused by Neisseria meningitidis ~~*shall*~~ must not attend a day care facility, or a private, parochial, charter, or public school as long as the disease is present in a communicable form. ~~*(4-5-00)*~~(____)

**e.** Persons with meningococcal disease in health care facilities or residential care facilities ~~*shall*~~ must be placed under respiratory isolation until twenty-four (24) hours after the initiation of effective therapy. ~~*(11-17-83)*~~(____)

**34. Norovirus**. (____)

**a.** Each case of Norovirus must be reported to the Department or District within one (1) working day of identification. (____)

**b.** Each report of a case must be investigated to confirm the diagnosis, determine the

extent of the outbreak, and determine the source of the infection. ( )

**c.** Persons *suspected or diagnosed with* Norovirus are *excluded* from working as food employees while symptomatic unless *an* exemption is made by the Department or District. ( )

**d.** Persons excreting Norovirus must not attend day care facilities or schools while symptomatic or provide personal care in day care, custodial institutions, or medical facilities unless exemption is obtained from the Department or District. This restriction will be rescinded once asymptomatic, unless hygienic practices are insufficient. ( )

**3~~4~~5. Pertussis**. (9-21-92)

**a.** Each case or suspected case of pertussis ~~*shall*~~ must be reported to the Department or District by telephone within one (1) working day of identification. ~~*(9-21-92)*~~( )

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, to identify susceptible contacts, and to identify the source of the infection so additional cases can be prevented. ~~*(11-17-83)*~~( )

**c.** A person who is diagnosed with pertussis ~~*shall*~~ must not engage in any occupation in which there is direct contact with children in a day care facility or other persons in health care facilities, residential care facilities, or schools as long as the disease is in a communicable stage. ~~*(11-17-83)*~~( )

**d.** Any person diagnosed with pertussis ~~*shall*~~ must not attend a private, parochial, charter, or public school or a day care facility as long as the disease is in a communicable stage. ~~*(4-5-00)*~~( )

**3~~5~~6. Plague**. (11-17-83)

**a.** Each case or suspected case of plague ~~*shall*~~ must be reported to the Department or District by telephone immediately, day or night, upon identification, which ~~*shall*~~ will notify the Idaho Department of Agriculture if animals are involved. ~~*(4-5-00)*~~( )

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis, determine the source and extent of the outbreak, and to ascertain if there has been person-to-person transmission. ~~*(11-17-83)*~~( )

**c.** Cases or suspected cases of pneumonic plague in health care facilities ~~*shall*~~ must be placed under droplet precautions until two (2) full days of appropriate antibiotic therapy has been completed, and there has been a favorable clinical response. ~~*(4-5-00)*~~( )

**d.** Cases or suspected cases of bubonic plague in health care facilities ~~*shall*~~ must be placed under strict isolation precautions and treated with appropriate antibiotics. ~~*(9-21-92)*~~( )

**e.** Household and face-to-face contacts of persons with pneumonic plague ~~*shall*~~ must be placed on chemoprophylaxis and placed under surveillance for seven (7) days. Persons who refuse chemoprophylaxis shall be maintained under droplet precautions with careful surveillance

for seven (7) days. ~~(4-5-00)~~(____)

**3~~6~~7. Pneumococcal Disease**. (5-3-03)

**a.** Each case of invasive Pneumococcal disease in children less than eighteen (18) years of age, including but not limited to meningitis, septicemia, bacteremia, and pneumonia ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~(5-3-03)~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis and determine relevant vaccine history. ~~(5-3-03)~~(____)

**c.** Any child who is diagnosed with Pneumococcal invasive disease ~~*shall*~~ will be restricted from a day care facility, school, or work as long as the disease in a communicable form. ~~(5-3-03)~~(____)

**3~~7~~8. Pneumocystis Carinii Pneumonia (PCP)**. (9-21-92)

**a.** Each case of Pneumocystis carinii pneumonia ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~(5-3-03)~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, and to determine the underlying cause of any immune deficiency which may have contributed to the disease. If the underlying cause is an HIV infection, that ~~*shall*~~ must be reported. ~~(9-21-92)~~(____)

**3~~8~~9. Poliomyelitis**. (9-21-92)

**a.** Each case or suspected case of poliomyelitis ~~*shall*~~ must be reported to the Department or District by telephone within one (1) working day of identification.~~(9-21-92)~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine whether the case is polio vaccine associated, or wild virus associated, to determine the extent of the outbreak, to ascertain if there has been person-to-person transmission, to identify susceptible contacts, carriers, and the source of the infection. ~~(9-21-92)~~(____)

**c.** The immunization status of all contacts ~~*shall*~~ will be ascertained and all susceptible contacts ~~*shall*~~ will be offered immunization. ~~(11-17-83)~~(____)

**~~39~~40. Psittacosis**. (11-17-83)

**a.** Each case of psittacosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~(5-3-03)~~(____)

**b.** Each case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, and to identify contact with possible sources of the infection. ~~(11-17-83)~~(____)

**c.** Any identified sources or suspected sources of infection ~~*shall*~~ must be reported to

the Department which ~~*shall*~~ will notify the Idaho Department of Agriculture if birds or other animals are involved. ~~*(11-17-83)*~~(____)

**4~~0~~1. Q Fever**. (11-17-83)

**a.** Each case ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(5-3-03)*~~(____)

**b.** Each reported case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, and to identify the source of the infection. ~~*(11-17-83)*~~(____)

**c.** Any identified or suspected sources of infection ~~*shall*~~ must be reported to the Department which ~~*shall*~~ will notify the Idaho Department of Agriculture if animals are involved. ~~*(11-17-83)*~~(____)

**4~~1~~2. Rabies**. (11-17-83)

**a.** Each case or suspected case of rabies in humans ~~*shall*~~ must be reported immediately to the Department or District, day or night, upon identification. Each case of rabies in animals ~~*shall*~~ will be reported to the Department or District and the Idaho Department of Agriculture within one (1) working day. ~~*(4-5-00)*~~(____)

**b.** Each report of a case or suspected case of rabies in humans ~~*shall*~~ will be investigated to confirm the diagnosis, to identify the source and other persons or animals that may have been exposed to the source, and to identify persons who may need to undergo prophylaxis with rabies immune globulin and rabies vaccine. ~~*(4-5-00)*~~(____)

**c.** Each instance of post-exposure prophylaxis (PEP) initiation ~~*shall*~~ must be reported to the Department or District within one (1) working day. ~~*(4-5-00)*~~(____)

**d.** Each reported PEP initiation ~~*shall*~~ will be investigated to determine if additional individuals require PEP and to identify the source of possible exposure. ~~*(4-5-00)*~~(____)

**e.** In the event that a human or animal case of rabies occurs, any authorized representative of the Idaho Department of Agriculture or Department or District ~~*shall*~~ will establish such isolation and quarantine of animals as deemed necessary to protect the public health. ~~*(9-21-92)*~~(____)

**f.** The handling of a rabies susceptible animal which has bitten a person ~~*shall*~~ must be as follows: ~~*(9-21-92)*~~(____)

i. Any livestock which has bitten a person ~~*shall*~~ must be managed by the Idaho Department of Agriculture. ~~*(9-21-92)*~~(____)

ii. Any healthy domestic dog, cat, or ferret which has bitten a person ~~*shall*~~ must be observed for ten (10) days following the bite under the supervision of a licensed veterinarian or other person designated by the Idaho Department of Agriculture or the Department. Such observation ~~*shall*~~ must be within an enclosure, or with restraints deemed adequate to prevent

contact with any member of the public or other animals. ~~*(4-5-00)*~~(____)

iii. It ~~*shall be*~~ is the animal owner's responsibility to carry out the quarantine of the biting animal and to follow instructions provided for the quarantine of the animal. ~~*(11-17-83)*~~(____)

iv. Any domestic dog, cat, or ferret that has not been vaccinated against rabies and cannot be quarantined, ~~*shall*~~ must be destroyed by a means other than shooting in the head. The head ~~*shall*~~ must be submitted to an approved laboratory for rabies analysis. ~~*(4-5-00)*~~(____)

v. Susceptible animals other than domestic dogs, cats, ferrets, or livestock ~~*shall*~~ must be destroyed and the head submitted to an approved laboratory for rabies analysis unless an exemption is given by the Department or District. ~~*(4-5-00)*~~(____)

vi. No person ~~*shall*~~ will destroy or allow to be destroyed the head of a rabies susceptible animal which has bitten a person without authorization from the Department. ~~*(11-17-83)*~~(____)

**g.** The handling of a rabies susceptible animal that has not bitten a person, but has within the past one hundred eighty (180) days been bitten, mouthed, or mauled by, or closely confined in the same premises with a known rabid animal ~~*shall*~~ must be as follows: ~~*(9-21-92)*~~(____)

i. Any domestic dog, cat, ferret, or livestock which has not been vaccinated as recommended by the American Veterinary Medical Association, ~~*shall*~~ must be placed in quarantine for a period of six (6) months under the observation of a licensed veterinarian or a person designated by the Department or the Idaho Department of Agriculture and vaccinated ~~*one (1) month prior to release from quarantine*~~ according to the Rabies Compendium. ~~*Vaccinated a*~~Animals with current vaccinations including livestock should be revaccinated immediately with an ~~*currently recommended*~~ appropriate rabies vaccine and quarantined for ~~*ninety*~~ forty-five (~~*90*~~45) days. These provisions apply only to domestic animals for which an approved rabies vaccine is available. ~~*(4-5-00)*~~(____)

ii. The quarantine of such animal ~~*shall*~~ must be within an enclosure deemed adequate by an authorized representative of the Idaho Department of Agriculture or the Department, or District to prevent contact with any person or rabies susceptible animal. ~~*(9-21-92)*~~(____)

iii. The owner of the animal ~~*shall be*~~ is financially responsible for the cost of isolating and quarantining the animal and costs for specimen collection and testing. ~~*(11-17-83)*~~(____)

iv. Destruction of such animal ~~*shall be*~~ is permitted as an alternative to quarantine. ~~*(11-17-83)*~~(____)

**h.** Any rabies susceptible animal other than domestic dogs, cats, ferrets, or livestock which are suspected of having rabies, or which have been in close contact with an animal known to be rabid ~~*shall*~~ must be destroyed. The animal ~~*shall*~~ must be tested by an approved laboratory for rabies if a person has been bitten, or has had direct contact with the animal which might result in the person becoming infected. ~~*(4-5-00)*~~(____)

**i.** Nothing in these rules is intended or ~~*shall*~~ will be construed to limit the power of any city or county in its authority to enact more stringent requirements to prevent the transmission of rabies. ~~*(11-17-83)*~~(____)

**4~~2~~3. Relapsing Fever**. (11-17-83)

**a.** Each case of relapsing fever ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, determine the extent and source of the outbreak, and to ascertain whether transmission by lice or ticks is likely. ~~*(11-17-83)*~~(____)

**4~~3~~4. Reye Syndrome**. (9-21-92)

**a.** Each case of Reye syndrome ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each case ~~*shall*~~ will be investigated to obtain specific clinical information, to learn more about the etiology, risk factors, and means of preventing the syndrome. ~~*(9-21-92)*~~(____)

**4~~4~~5. Rocky Mountain Spotted Fever**. (11-17-83)

**a.** Each case of Rocky Mountain spotted fever ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report ~~*shall*~~ will be investigated to confirm the diagnosis, to identify the source of infection, and to determine if control measures should be initiated. ~~*(11-17-83)*~~(____)

**4~~5~~6. Rubella**. (11-17-83)

**a.** Each case or suspected case of rubella (including congenital rubella syndrome) ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(9-21-92)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis, determine the extent of the outbreak, to identify any contacts who are susceptible, pregnant women, and to document the presence of the congenital rubella syndrome. ~~*(11-17-83)*~~(____)

**c.** Persons diagnosed with rubella ~~*shall*~~ must not engage, as long as the disease is in a communicable stage, in any occupation in which there is close contact with children in day care facilities or other persons in schools, health care, or residential care facilities, or with women likely to be pregnant. ~~*(11-17-83)*~~(____)

**d.** Any person with rubella, regardless of age, ~~*shall*~~ must not attend or be present in a private, parochial, charter, or public school as long as the disease is in a communicable stage.

~~*(4-5-00)*~~(____)

**e.** A person diagnosed with rubella ~~*shall*~~ must not attend or be present in a day care facility as long as the disease is in a communicable form. ~~*(11-17-83)*~~(____)

**4~~6~~7. Salmonellosis**. (11-17-83)

**a.** Each case of salmonellosis (including typhoid fever) ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(9-21-92)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, and to identify contacts, carriers, and the source of contamination. ~~*(11-17-83)*~~(____)

**c.** ~~*Fecally incontinent persons who are excreting Salmonella shall not attend day care facilities unless exemption is obtained from the Department or District. Any exemptions may be based on the absence of symptoms, and the hygiene of the facility and staff.*~~ Symptomatic persons excreting non-Typhi Salmonella are restricted from working as food employees in accordance with the IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. ~~*(9-21-92)*~~(____)

**d.** Persons excreting non-Typhi Salmonella ~~*shall be restricted from working as food handlers, and shall not*~~ must not attend day care facilities while incontinent nor engage in any occupation in which they provide personal care to children in day care facilities or to persons who are confined to health care facilities or residential care facilities unless exemption is obtained from the Department or District. ~~*Any exemption for day care, health care, or residential care facilities may be based on the absence of symptoms and the hygiene of the facility and staff.*~~ ~~*(9-21-92)*~~(____)

i. The Department or authorized representative for the Department may rescind this restriction on cases ~~*other than Salmonella typhi infection*~~ of non-Typhi Salmonella provided that they are asymptomatic. If hygienic practices are insufficient for persons in any of the above mentioned occupations or activities, before returning to work or day care they must provide two (2) approved fecal specimens, collected not less than twenty-four (24) hours apart~~,~~ and forty-eight (48) hours after the last dose of antimicrobials, which fail to show Salmonella upon testing by a licensed laboratory. ~~*(11-17-83)*~~(____)

ii. Any member of a household in which there is a case of non-typhi salmonellosis may not engage in the above occupations or work as a food employee until they produce at least one (1) negative fecal specimen for Salmonella testing on examination by a licensed laboratory. ~~*(4-5-00)*~~(____)

~~***e.***~~ ~~*Identification and management of non-Salmonella typhi carriers.*~~ ~~*(11-17-83)*~~

~~*i.*~~ ~~*Any person who excretes Salmonella for more than one (1) year after onset is defined to be a chronic carrier.*~~ ~~*(11-17-83)*~~

~~*ii*~~**e.** Chronic carriers, ~~*shall be*~~ which are those who excrete Salmonella for more than

one (1) year after onset, are restricted from working as food ~~handlers~~ employees, and ~~shall~~ must not engage in any occupation in which they provide personal care to children in day care facilities or to persons who are confined to health care facilities or residential care facilities until Salmonella ~~species~~ is not identified by a licensed laboratory in any of three (3) successive approved fecal specimens collected at least seventy-two (72) hours apart. ~~(4-5-00)~~(____)

**f.** Food employees excreting Salmonella Typhi must be managed in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

**g.** ~~Identification and management of typhoid fever cases and carriers.~~ Persons excreting Salmonella Typhi must not attend day care facilities while incontinent and must not engage in any occupation in which they provide personal care to children in day care facilities or to persons who are confined to health care facilities or residential care facilities unless exemption is obtained from the Department or District. ~~(11-17-83)~~(____)

~~i~~**h.** Any person with typhoid fever ~~shall~~ will remain subject to the supervision of the Department or authorized representative of the Department until Salmonella Typhi is not isolated by a licensed laboratory from ~~four~~ three (~~4~~3) successive approved fecal specimens. These specimens are to be collected at least twenty-four (24) hours apart and not earlier than one (1) month after onset. ~~(11-17-83)~~(____)

~~ii~~**i.** Any member of a household in which there is a case of Salmonella Typhi may not engage in the ~~above~~ occupations described in Subsections 020.47.e. and 020.47.g. of these rules until at least two (2) fecal specimens are negative for Salmonella testing on examination by a licensed laboratory. ~~(4-5-00)~~(____)

~~iii~~**j.** All chronic carriers of Salmonella Typhi ~~shall~~ must abide by the typhoid fever carrier agreement. Failure to abide by the carrier agreement may cause the carrier to be isolated. ~~(11-17-83)~~(____)

~~(1)~~i. The typhoid carrier agreement is a written agreement between the carrier and the Department or District. ~~(11-17-83)~~(____)

~~(2)~~ii. The carrier agrees to not work as a food ~~handler~~ employee, to notify the Department or District at once of any change in address or occupation, to report to the District immediately any cases of illness suggestive of typhoid fever in his~~/her~~ family or among immediate associates, and to furnish specimens for examination in a manner prescribed by the Department or District. ~~(11-17-83)~~(____)

~~iv~~**k.** Chronic carriers of typhoid fever may be released from carrier status when Salmonella Typhi is not identified by a licensed laboratory in any of six (6) consecutive approved fecal specimens and urine specimens collected at least one (1) month apart. (11-17-83)

**4~~7~~8. Severe Acute Respiratory Syndrome (SARS)**. (4-6-05)

**a.** Each case of suspected or confirmed SARS must be reported to the Department or District within one (1) working day. (4-6-05)

**b.** Each report of a case of suspected or confirmed SARS must be investigated to confirm the diagnosis, review the travel and other exposure history, identify other persons potentially at risk, and to identify the most likely source of infection. (4-6-05)

**c.** Recommendations for appropriate isolation of the suspected or confirmed case will be made. (4-6-05)

**4~~8~~9.** **Shigellosis**. (11-17-83)

**a.** Each case of shigellosis ~~*shall*~~ must be reported to the Department or District within ~~*three*~~ one (~~3~~1) working day~~s~~ of identification. ~~(5-3-03)~~(____)

**b.** Each report of a case ~~*shall*~~ must be investigated to confirm the diagnosis and to determine the extent of the outbreak. An attempt ~~*shall*~~ must be made to identify contacts, carriers, and the source of infection. ~~(11-17-83)~~(____)

**c.** Food employees excreting Shigella must be managed in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

**d.** No member of the household in which there is a case of shigellosis may work as a food employee unless the Department or District approves and at least one (1) fecal specimen is negative for Shigella testing on examination by a licensed laboratory. (____)

~~**c**~~**e.** Persons excreting Shigella ~~*shall*~~ must not ~~*work as food handlers nor*~~ attend day care facilities~~. *They shall*~~ while incontinent and must not engage in any occupation in which they provide personal care to children in day care facilities or to persons who are confined to health care or residential care facilities while the disease is present in a communicable form unless exemption is obtained from the Department or District. In an outbreak in a facility, a cohort system may be approved. ~~(9-21-92)~~(____)

i. The Department or authorized representative of the Department may rescind this restriction provided that two (2) approved fecal specimens collected at least twenty-four (24) hours apart fail to show Shigella upon testing by a licensed laboratory. (11-17-83)

ii. No member of the household in which there is a case of shigellosis may engage in any of the above-mentioned occupations unless the Department or District approves and at least one (1) fecal specimen is negative for Shigella testing on examination by a licensed laboratory. ~~(9-21-92)~~(____)

~~*49*~~**50.** **Smallpox**. (5-3-03)

**a.** Each case or suspected case of smallpox ~~*shall*~~ must be reported to the Department or District by telephone immediately upon identification. ~~(5-3-03)~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated promptly to confirm the diagnosis, to determine the extent of the outbreak, to identify the source of the

infection, and to identify susceptible contacts. ~~*(5-3-03)*~~(____)

**c.** Cases or suspected cases of smallpox in health care facilities ~~*shall*~~ must be placed under airborne, contact, and standard precautions until the disease is no longer in a communicable stage. ~~*(5-3-03)*~~(____)

**d.** A person who is diagnosed as having smallpox ~~*shall*~~ must not engage in any occupation as long as the disease is in a communicable stage. ~~*(5-3-03)*~~(____)

**e.** A child diagnosed with smallpox ~~*shall*~~ must not attend a day care facility as long as the disease is in a communicable stage. ~~*(5-3-03)*~~(____)

**f.** Any person, regardless of age, ~~*shall*~~ must not attend a private, parochial, charter, or public school or attend public gatherings as long as the disease is in a communicable stage. ~~*(5-3-03)*~~(____)

**g.** In the event of an outbreak, the Department or District may exclude susceptible children and employees from day care facilities and schools where a case has been identified until adequate immunization is obtained, or the threat of further spread is contained (Section 33-512, Idaho Code). (5-3-03)

**5~~0~~1. Streptococcus Pyogenes, Group A, Infections Which are Invasive or Result in Rheumatic Fever**. (11-17-83)

**a.** Each case of Streptococcus pyogenes, Group A, infection which is invasive or results in rheumatic fever ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine if the infection is part of an outbreak, and to identify the source of the infection. ~~*(4-5-00)*~~(____)

**c.** Infected persons should not attend day care, school, or work in health care facilities until twenty-four (24) hours has elapsed after treatment is initiated, or until the patient is no longer infectious as determined by a physician, District or the Department. (9-21-92)

**5~~1~~2. Syphilis**. (9-21-92)

**a.** Each case or suspected case of infectious, or recently infectious, syphilis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. Cases of late latent syphilis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each case or suspected case of primary, secondary, or early latent syphilis ~~*shall*~~ will be investigated by a representative of the Department or District after notification has been received. ~~*(9-21-92)*~~(____)

**c.** Each person diagnosed with infectious syphilis ~~*shall be*~~ is required to inform their sexual contacts that they may have been exposed to a sexually transmitted infection (venereal

disease), or provide sufficient information so public health officials may locate contacts and assure that each is offered prompt diagnosis and treatment (Section 39-605, Idaho Code). ~~*(4-5-00)*~~(____)

**d.** A physician may order blood tests for syphilis when an informed consent is not possible and there has been or is likely to be significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (5-16-90)

**5~~2~~3. Tetanus**. (9-21-92)

**a.** Each case of tetanus ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis and to determine the immunization status of the case. ~~*(9-21-92)*~~(____)

**5~~3~~4. Transmissible Spongiform Encephalopathies (TSEs), Including Creutzfeldt-Jakob Disease (CJD) and Variant CJD (vCJD).** (4-6-05)

**a.** Each case or suspected case of a transmissible spongiform encephalopathy (TSE) must be reported to the Department or District within three (3) working days of identification. (4-6-05)

**b.** Each report of a case must be investigated to determine the cause and confirm the diagnosis. (4-6-05)

**5~~4~~5. Trichinosis**. (11-17-83)

**a.** Each case of trichinosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, and to identify the source of infection. ~~*(11-17-83)*~~(____)

**c.** Any identified or suspected source of infection ~~*shall*~~ must be reported to the Department which ~~*shall*~~ will immediately notify the Idaho Department of Agriculture ~~*and/*~~or other regulatory agency. ~~*(11-17-83)*~~(____)

**5~~5~~6. Toxic Shock Syndrome**. (11-17-83)

**a.** Each case of toxic shock syndrome ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each case ~~*shall*~~ will be investigated to obtain specific clinical information on the syndrome to learn more about the etiology of the syndrome, risk factors associated with the syndrome, and means of preventing the syndrome. ~~*(11-17-83)*~~(____)

**5~~6~~7. Tuberculosis**. (11-17-83)

**a.** Each case or suspected case of tuberculosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case or suspected case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify contacts, associated cases, and the source of the infection. ~~*(11-17-83)*~~(____)

**c.** Restriction of cases and contacts. (11-17-83)

i. In health care facilities, persons with active pulmonary tuberculosis ~~*shall*~~ must be placed under airborne precautions until they have been determined to be noninfectious by the licensed physician, the infection control committee of the facility or the Department. Patients suspected to have pulmonary tuberculosis ~~*shall*~~ must be placed under airborne precautions until the diagnosis of infectious pulmonary tuberculosis has been excluded by the attending physician. ~~*(4-5-00)*~~(____)

ii. Patients with infectious pulmonary tuberculosis ~~*shall*~~ must not engage in any occupation in which they have direct contact with students in schools, provide personal care to children in day care facilities, or provide personal care to persons confined to health care or residential care facilities until they have been determined to be noninfectious by their physician. ~~*(9-21-92)*~~(____)

iii. Patients with infectious pulmonary tuberculosis may not attend a school or day care facility until they have been determined to be noninfectious by their licensed physician and the Department or District. (9-21-92)

iv. Any member of the household in which there is a case of infectious tuberculosis ~~*shall*~~ must not engage in any occupation in which he provides direct supervision of students in schools, personal care to children in day care facilities, or personal care to persons who are confined to health care or residential facilities, or attend a school or day care facility until he has been determined to be free from communicable tuberculosis. ~~*(9-21-92)*~~(____)

**d.** In the event that a case of communicable tuberculosis is diagnosed in an employee or patient of a health care facility, the facility ~~*shall*~~ must conduct an investigation to identify contacts. The Department or District authorized representative may assist in the investigation. ~~*(9-21-92)*~~(____)

**5~~7~~8. Tularemia**. (11-17-83)

**a.** Each case or suspected case of tularemia ~~*shall*~~ must be reported to the Department or District ~~*within one (1) working day of*~~ immediately upon identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ will be investigated to confirm the diagnosis and to identify the source of the infection. ~~*(4-5-00)*~~(____)

**c.** Any source or suspected source of the infection ~~*shall*~~ must be reported to the Department, which ~~*shall*~~ will notify the Idaho Department of Agriculture. ~~*(11-17-83)*~~(____)

**5~~8~~9. Viral or Aseptic Encephalitis and Meningitis**. (4-5-00)

**a.** Each case of diagnosed or suspected viral or aseptic encephalitis and meningitis ~~*shall*~~ must be reported within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case may be investigated to confirm the diagnosis, to identify clusters or outbreaks of the infection, and to identify the agent or source of the infection. (9-21-92)

**~~59~~60. West Nile Virus (WNV) Infection**. (4-6-05)

**a.** Each case of diagnosed west nile virus (WNV) infection must be reported to the Department or District within three (3) working days. A WNV infection will be defined as asymptomatic (determined through blood donation screening), fever, encephalitis, meningitis, meningoencephalitis, acute flaccid paralysis or other central or peripheral nervous system manifestation. (4-6-05)

**b.** Each report of a case of WNV infection must be investigated to confirm the diagnosis, review any travel history, review any blood donations, and identify the most likely source of infection including exposure to vectors, blood transfusion or organ receipt. (4-6-05)

**6~~0~~1. Yersiniosis**. (11-17-83)

**a.** Each case of yersiniosis ~~*shall*~~ must be reported to the Department or District within three (3) working days of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case ~~*shall*~~ must be investigated to confirm the diagnosis and to identify carriers and the source of the infection. ~~*(11-17-83)*~~(____)

**c.** Symptomatic persons excreting Yersinia are restricted from working as food employees in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. (____)

**6~~1~~2. Extraordinary Occurrence of Illness, Including Clusters**. (4-5-00)

**a.** Cases, suspected cases, and clusters of extraordinary or unusual illness ~~*shall*~~ must be reported to the Department or District within one (1) working day by the diagnosing person. ~~*(4-5-00)*~~(____)

i. Each case, suspected case, and cluster ~~*shall*~~ will be investigated to confirm the diagnosis, to determine the extent of the outbreak, to identify the source of infection or exposure, and to determine whether there is a risk to the public warranting intervention by a public health agency. Evaluation and control measures ~~*shall*~~ will be undertaken in consultation with the Department and other appropriate agencies. The Department or authorized representative of the Department may elect to investigate by conducting special studies as outlined in Section 016 of these rules. ~~*(4-5-00)*~~(____)

ii. Extraordinary or unusual outbreaks include illnesses which may be a significant risk to the public, may involve a large number of persons, or are a newly described entity. (9-21-92)

iii. Even in the absence of a defined etiologic agent or toxic substance, clusters of unexplained acute illness and early-stage disease symptoms ~~*shall*~~ must be reported to the Department or District within one (1) working day and investigated. ~~*(4-5-00)*~~(____)

**6~~2~~3. Severe Reaction to Any Immunization**. (9-21-92)

**a.** Each case or suspected case of a severe reaction to any immunization ~~*shall*~~ must be reported by telephone to the Department or District within one (1) working day of identification. ~~*(9-21-92)*~~(____)

**b.** Each case or suspected case ~~*shall*~~ will be investigated to confirm and to document the circumstances relating to the reported reaction. ~~*(11-17-83)*~~(____)

**6~~3~~4. Food Poisoning, Foodborne Illness, and Waterborne Illness**. (5-3-03)

**a.** Each case or suspected case of food poisoning, foodborne illness, or waterborne illness ~~*shall*~~ must be reported to the Department or District within one (1) working day of identification. ~~*(5-3-03)*~~(____)

**b.** Each report of a case or suspected case of food poisoning, food borne illness, or waterborne illness may be investigated to confirm the diagnosis, to determine the extent of the outbreak, to identify the source, and to determine if actions need to be taken to prevent additional cases. (5-3-03)

**6~~4~~5. Lead Poisoning or Excess Lead Exposure**. (9-21-92)

**a.** Each case of symptomatic lead poisoning or excess lead exposure as determined by a blood lead level of ten (10) micrograms or more per deciliter (10 ug/dl) of whole blood ~~*shall*~~ must be reported to the Department within one (1) week of identification. ~~*(9-21-92)*~~(____)

**b.** Each case of lead poisoning or excess lead exposure may be investigated to determine the source, and to determine if actions need to be taken to prevent additional cases. (9-21-92)

**021. -- 024. (RESERVED).**

**025. CONTROL OF REPORTABLE AND RESTRICTABLE DISEASES IN CERTAIN FACILITIES.**

**01. Day Care Facilities**. (11-17-83)

**a.** Day care reportable and restrictable diseases are those diseases that are readily transmissible among children and staff in day care facilities. (11-17-83)

**b.** Examples of day care restrictable diseases that are reportable include~~*, but are not limited to*~~: ~~*(11-17-83)*~~(____)

i. Amebiasis; (11-17-83)

ii. Campylobacteriosis; (11-17-83)

iii. Diphtheria; (11-17-83)

iv. Escherichia coli 0157:H7 and other shiga toxin producing E. coli (STEC); (4-5-00)

v. Giardiasis; (11-17-83)

vi. Hepatitis A; (9-21-92)

vii. Haemophilus influenzae invasive disease; (9-21-92)

viii. Measles; (11-17-83)

ix. Mumps; (11-17-83)

x. Neisseria meningitidis invasive disease; (9-21-92)

xi. Norovirus; (____)

xii. Pertussis; (11-17-83)

xiii. Pneumococcal invasive disease in children less than eighteen (18) years of age; (5-3-03)

x~~ii~~iv. Poliomyelitis; (11-17-83)

x~~i~~v. Rubella; (11-17-83)

xvi. Salmonellosis; (11-17-83)

xvii. Severe acute respiratory syndrome (SARS); (4-6-05)

xviii. Shigellosis; (11-17-83)

x~~viii~~ix. Smallpox; (5-3-03)

x~~i~~x. Streptococcus pyogenes, Group A, infections which are invasive or result in rheumatic fever; (9-21-92)

xxi. Tuberculosis; (11-17-83)

**c.** Examples of day care restrictable diseases not on the reportable list include:

(11-17-83)

i. Conjunctivitis; (11-17-83)

ii. Cutaneous fungal infections; (11-17-83)

iii. Pediculosis; (11-17-83)

iv. Scabies; (11-17-83)

v. Staphylococcal infections; (11-17-83)

vi. Streptococcal pharyngeal infections; (9-21-92)

vii. Varicella (chickenpox). (5-3-03)

**d.** A person who is diagnosed to have a day care restrictable disease ~~*shall*~~ must not engage, as long as the disease is in a communicable stage, in any occupation in which there is direct contact with children in a day care facility. ~~*(11-17-83)*~~(  )

**e.** A child who is diagnosed to have a day care restrictable disease ~~*shall*~~ must not attend a day care facility as long as the disease is in a communicable stage. This restriction may be removed by the written certification of a licensed physician, public health nurse or school nurse that the person's disease is no longer communicable. ~~*(11-17-83)*~~(  )

**f.** When satisfactory measures have been taken to prevent the transmission of disease, the affected child or employee may continue to attend or to work in the day care facility if approval is obtained from the Department or District. (9-21-92)

**02. Food Service Facilities**. (11-17-83)

**a.** A person who is diagnosed to have one (1) of the following diseases ~~*or conditions*~~ which can be transmitted from one (1) person to another through food or beverage ~~*shall*~~ must not work as a food ~~*handler*~~ employee as long as the disease is in a communicable stage. These diseases ~~*and conditions*~~ include~~*, but are not limited to*~~: ~~*(11-17-83)*~~(  )

i. Amebiasis; (11-17-83)

ii. Campylobacteriosis; (11-17-83)

iii. Cholera; (11-17-83)

iv. Cryptosporidiosis; (  )

~~*iv. Diarrhea (until common communicable causes have been ruled out);*~~ ~~*(11-17-83)*~~

v. Diphtheria; (11-17-83)

vi. Escherichia coli 0157:H7 and other shiga toxin producing E. coli (STEC);(4-5-00)

vii. Giardiasis; (11-17-83)

viii. Hepatitis A; (9-21-92)

ix. Norovirus; ( )

~~i~~x. Salmonellosis; (11-17-83)

xi. Shigellosis; (11-17-83)

~~xi. Staphylococcal skin infections; (11-17-83)~~

~~xii. Streptococcal skin infections; (11-17-83)~~

xii~~i~~. Taeniasis; (11-17-83)

xi~~v~~ii. Tuberculosis (active); (11-17-83)

~~xv. Vomiting (until noninfectious cause is identified); (11-17-83)~~

xiv. Yersiniosis ( )

~~e~~**b.** If the person in charge of the eating or drinking establishment has reason to suspect that any employee has a disease listed in Subsection 025.02.a. of these rules that is in a communicable form, he must immediately notify the Department or District and obtain guidance on proper actions needed to protect the public. ~~(4-5-00)~~( )

**c.** A person exhibiting the following conditions which are consistent with diseases that may be transmitted from one (1) person to another through food or beverage must not work as a food employee and must be managed by the person in charge in accordance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Idaho Food Code. ( )

i. Diarrhea (until common communicable causes have been ruled out); ( )

ii. Fever; ( )

iii. Jaundice; ( )

iv. Sore throat with fever; ( )

v. Uncovered and open or draining skin lesions with pus, such as a boil or open wound; ( )

vi. Vomiting (until noninfectious cause is identified). ( )

~~*b*~~**d.** The state health officer or his authorized representative may require a food ~~*handler*~~ employee to submit to an examination to determine the presence of a disease that can be transmitted by means of food when there is reasonable cause to believe the food ~~*handler*~~ employee is afflicted with a disease or condition listed in ~~*this*~~ Subsections 025.02.a. and 025.02.c. of these rules. ~~*(11-17-83)*~~(  )

**03. Schools**. (11-17-83)

**a.** School reportable and restrictable diseases are those diseases that are readily transmissible among students and staff in schools. (11-17-83)

**b.** Examples of school restrictable diseases that are reportable include~~*, but are not limited to*~~: ~~*(11-17-83)*~~(  )

i. Diphtheria; (11-17-83)

ii. Escherichia coli 0157:H7 and other shiga toxin producing E. coli (STEC);(4-5-00)

iii. Haemophilus influenzae invasive diseases; (9-21-92)

iv. Measles; (11-17-83)

v. Mumps; (11-17-83)

vi. Neisseria meningitidis invasive disease; (9-21-92)

vii. Norovirus; (  )

viii. Pertussis; (11-17-83)

~~*vii*~~ix. Plague; (11-17-83)

~~*i*~~x. Pneumococcal invasive disease in children less than eighteen (18) years of age; (5-3-03)

xi. Rubella; (11-17-83)

xii. Severe acute respiratory syndrome (SARS); (4-6-05)

xiii. Shigellosis; (11-17-83)

x~~*ii*~~iv. Smallpox; (5-3-03)

x~~*i*~~v. Streptococcus pyogenes, Group A, infections which are invasive or result in rheumatic fever; (9-21-92)

xvi. Tuberculosis (active). (11-17-83)

**c.** Examples of school restrictable diseases not on the reportable list include: (11-17-83)

i. Conjunctivitis; (11-17-83)

ii. Cutaneous fungal infections; (11-17-83)

iii. Pediculosis; (11-17-83)

iv. Scabies; (11-17-83)

v. Staphylococcal skin infections; (11-17-83)

vi. Streptococcal pharyngeal infections; (9-21-92)

vii. Varicella (chickenpox). (5-3-03)

**d.** Any person who is diagnosed to have a school restrictable disease ~~*shall*~~ must not engage, as long as the disease is in a communicable stage, in any occupation that involves direct contact with students in a private, parochial charter, or public school. ~~*(4-5-00)*~~(  )

**e.** Any person who is diagnosed with or reasonably suspected to have a school restrictable disease ~~*shall*~~ must not attend a private, parochial, charter, or public school as long as the disease is in a communicable stage. ~~*(4-5-00)*~~(  )

**f.** A licensed physician, public health nurse, school nurse or other person authorized by the Department may determine when a person with a school restrictable disease can no longer transmit the disease to others. (11-17-83)

**g.** A school administrator must report the closure of any public, parochial, charter, or private school within one (1) working day when, in his opinion, such closing is related to a communicable disease. (4-5-00)

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

~~***997. Confidentiality.***~~
~~*Before any information about a patient, client, registrant, applicant, or recipient contained in the departmental records may be released to the person who is the subject of the record, to another departmental unit, to another governmental agency, or to a private individual or organization, the unit of the Department with custody of the record must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".*~~ ~~*(11-17-83)*~~

**~~998~~997. -- 999.(RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

### DOCKET NO. 16-0224-0501 (NEW CHAPTER)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 6-2604, Idaho Code.

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

**The Department of Health and Welfare is adopting this new chapter of rules to protect the public by establishing acceptable processes and standards for the cleanup of clandestine drug laboratories. This new chapter of rules was written to meet the requirements under the "Clandestine Drug Laboratory Cleanup Act" (S1122), passed by the 2005 Legislature**.

**Based on public comment, the following changes are being made to the proposed rule**:

**1. Clarified reference to the laboratory accreditation done by the American Industrial Hygiene Association; and**
**2. Corrected conversion of one hundred (100) square centimeters to sixteen (16), rather than four (4), square inches**.

**Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule**.

**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 Wednesday, October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 184 through 191**.

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

General Fund = $50,760 Salary + $20,573 Benefits + $6,667 Operating (Total = $78,000)
Idaho State Police federal COPS Grant = $27,000 (for startup/rules/public hearings - one time

cost)

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Elke Shaw-Tulloch at (208) 334-5950.

DATED this 7th day of November, 2005.


Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
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Boise, Idaho 83720-0036
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## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 6-2604, Idaho Code.

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

| | | | |
|---|---|---|---|
| **Date:** | **Tuesday, October 11, 2005** | **Wednesday, October 12, 2005** | **Thursday, October 13, 2005** |
| **Time:** | **7:00 - 9:00 p.m.** | **7:00 - 9:00 p.m.** | **7:00 - 9:00 p.m.** |
| **Place:** | **Ameritel Spectrum**<br>**7499 W. Overland Rd.**<br>**Boise, ID** | **Red Lion Hotel**<br>**621 21st Street**<br>**Lewiston, ID** | **Ameritel**<br>**333 Ironwood Ave.**<br>**Coeur d'Alene, ID** |
| **Date:** | **Monday, October 17, 2005** | **Tuesday, October 18, 2005** | **Wednesday, October 19, 2005** |
| **Time:** | **7:00 - 9:00 p.m.** | **7:00 - 9:00 p.m.** | **7:00 - 9:00 p.m.** |
| **Place:** | **Ameritel**<br>**1377 Blue Lakes Blvd. N.**<br>**Twin Falls, ID** | **Ameritel**<br>**1440 Bench Rd.**<br>**Pocatello, ID** | **Ameritel**<br>**645 Lindsey Blvd.**<br>**Idaho Falls, ID** |
| **Date:** | **Monday, October 24, 2005** | | |
| **Time:** | **7:00 - 9:00 p.m.** | | |
| **Place:** | **Best Western**<br>**908 Specht Rd.**<br>**Caldwell, ID** | | |

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

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

**This new chapter of rules will help protect people from inadvertent exposure to hazardous chemicals left over from the production of methamphetamine ("meth") or other illegal drugs on residential properties. Innocent members of the public may be harmed when they are exposed to chemical residues if the residential properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. The purpose of this new chapter of rules is to protect the public health, safety and welfare by establishing acceptable processes and standards for the cleanup of clandestine drug laboratories. It was developed as mandated under Senate Bill 1122, (2005), the "Clandestine Drug Laboratory Cleanup Act"**.

**These rules define who is responsible for cleaning up properties where clandestine drug laboratories have operated and establish the acceptable standard to which a property must be cleaned. The rules also establish a program that creates and maintains a list of residential properties that housed a clandestine drug laboratory and provides a process for removing a property from the list, once it has met the criteria specified in the rule**.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

**General Fund = $50,760 Salary + $20,573 Benefits + $6,667 Operating (Total = $78,000) Idaho State Police federal COPS Grant = $27,000 (for startup/rules/public hearings - one time cost)**

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 12, 19, and 26 in Boise. The stakeholders who participated included representatives from: US Department of Agriculture, Office of the Governor, Legislators, Office of Attorney General, Idaho State Police, Idaho Association of Realtors, Boise Police Department, Bureau of Homeland Security, Central District Health Department and Southwest District Health Department (representing local district health departments), Sheriff's Association (Payette County Sheriffs), Ada County Prosecuting Attorneys Association, cleanup contractors, Meridian Police Department (representing the Idaho Chiefs of Police Association), IDHW Rules Unit, Idaho Department of Environmental Quality, IDHW Division of Health Administration, IDHW Division of Health's Bureau of Community and Environmental Health, US Environmental Protection Agency, Ada County Association of Realtors, Idaho Building Contractors Association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Elke Shaw-Tulloch at (208) 334-5950.

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 Wednesday, October 26, 2005.

DATED this 5th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**IDAPA 16**
**TITLE 02**
**CHAPTER 24**

## 16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

**000. LEGAL AUTHORITY.**
The Department is authorized to adopt rules under the "Clandestine Drug Laboratory Cleanup Act," Section 6-2604, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title**. The title of these rules is IDAPA 16.02.24, "Clandestine Drug Laboratory Cleanup". ( )

**02. Scope**. ( )

**a.** These rules establish the acceptable processes and technology-based standards for the cleanup of clandestine drug laboratories in Idaho. ( )

**b.** The rules also establish a program to add and remove residential properties that housed a clandestine drug laboratory from a list maintained by the Department. ( )

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations for this chapter of rules. ( )

**003. ADMINISTRATIVE APPEALS AND THE RIGHT TO APPEAL PROPERTY LISTING.**

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

**02. Appeal of Property Listing**. The certification by the reporting law enforcement agency that it is more likely than not that the property has been contaminated through use as a clandestine drug laboratory is prima facie evidence for listing the property on the Clandestine Drug Laboratory Site Property List. ( )

**a.** Property Owner's Right to Appeal. The property owner listed on the Clandestine Drug Laboratory Site Property List may appeal the listing by filing a written request for hearing

with the Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036, within twenty-eight (28) days of the mailing of the notification by the law enforcement agency. ( )

**b.** Burden of Proof. The burden is on the property owner to show, by a preponderance of evidence, that the property has not been contaminated through use as a clandestine drug laboratory. ( )

**004. INCORPORATION BY REFERENCE.**
There are no documents that have been incorporated by reference into this chapter of rules.( )

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

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

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

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

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

**05. Internet Website**. The Department's internet website is found at http://www.healthandwelfare.idaho.gov. ( )

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

**01. Confidential Records**. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records”. ( )

**02. Public Records**. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

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

**010. DEFINITIONS.**
For the purposes of these rules, the following terms are used as defined below: ( )

**01. Certificate of Delisting**. A document issued by the Department certifying that a property has met the cleanup standard. ( )

**02.** **Certify**. To guarantee as meeting a standard. ( )

**03.** **Chain of Custody**. A procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the date and length of time of possession by each person. ( )

**04.** **Clandestine Drug Laboratory**. The area(s) where controlled substances or their immediate precursors, as those terms are defined in Section 37-2701, Idaho Code, have been, or were attempted to be, manufactured, processed, cooked, disposed of, or stored, and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing. ( )

**05.** **Clandestine Drug Laboratory Site Property List**. The list, maintained by the Department, of properties that have been identified as clandestine drug laboratories. ( )

**06.** **Cleanup Contractor**. One (1) or more individuals or commercial entities hired to conduct cleanup in accordance with the requirements of this rule. ( )

**07.** **Cleanup Standard**. The technology-based numerical value, established in Section 500 of these rules. ( )

**08.** **Clearance Sampling**. Testing conducted by a qualified industrial hygienist to verify that cleanup standards have been met. ( )

**09.** **Contamination or Contaminated**. The presence of chemical residues that exceed the cleanup standard established in Section 500 of these rules. ( )

**10.** **Delisted**. Removal of a property from the Clandestine Drug Laboratory Site Property List. ( )

**11.** **Demolish**. To completely tear down and dispose of a structure in compliance with local, state, and federal laws and regulations. ( )

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

**13.** **Discrete Sample**. A single sample taken. ( )

**14.** **Documentation**. Preserving a record of an observation through writings, drawings, photographs, or other appropriate means. ( )

**15.** **Listed**. Addition of a property to the Clandestine Drug Laboratory Site Property List. ( )

**16.** **Methamphetamine**. Dextro-methamphetamine, levo-methamphetamine, and any racemic mixture of dextro/levo methamphetamine. ( )

**17.** **Non-Porous**. Resistant to penetration of chemical substances or materials. ( )

**18.** **Porous**. Easily penetrated or permeated by chemical substances or materials. ( )

**19.** **Qualified Industrial Hygienist**. Must be one (1) of the following: ( )

**a.** Certified Industrial Hygienist. An individual who is certified in comprehensive practice by the American Board of Industrial Hygiene. ( )

**b.** Registered Professional Industrial Hygienist™. An individual who is a registered member of the Association of Professional Industrial Hygienists and possesses a baccalaureate degree, issued by an accredited college or university, in industrial hygiene, engineering, chemistry, physics, biology, medicine, or related physical and biological sciences who has a minimum of three (3) years full-time industrial hygiene experience. A completed master's degree in a related physical or biological science, or in a related engineering discipline, may be substituted for one (1) year of the experience requirement; and a similar doctoral degree may be substituted for an additional year of the experience requirement. ( )

**20.** **Sampling**. A surface sample collected by wiping or blotting a sample media on the surface being sampled. ( )

**21.** **Technology-Based Standard**. A cleanup level based on what is believed to be conservative and protective, while at the same time achievable by currently available technologies. ( )

**22.** **Vacant**. Being without an occupant for the purposes of habitation or occupancy. ( )

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

**100. POSTING THE CLANDESTINE DRUG LABORATORY SITE.**
In accordance with Section 6-2605, Idaho Code, the law enforcement agency having jurisdiction is responsible for posting a property with a sign stating that it has been identified as a clandestine drug laboratory. ( )

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

**110. NOTIFICATION PROCESS.**
Once a property has been identified as a clandestine drug laboratory, the law enforcement agency having jurisdiction is responsible for initiating notification to the property owner within seventy-two (72) hours using the Department-approved form available to law enforcement. ( )

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

**120. RECORD-KEEPING, LISTING, AND DELISTING A PROPERTY.**

**01.** **Listing a Property**. Upon notification by a law enforcement agency, using the Department approved form, the Department will place the property on a Clandestine Drug Laboratory Site Property List. No property may be listed unless the reporting law enforcement

agency certifies, on the approved form, that it is more likely than not that the property has been contaminated through use as a clandestine drug laboratory. The list will be publicly available online at: http://www.healthy.idaho.gov. ( )

**02. Delisting a Property**. When a property is determined by a qualified industrial hygienist to meet the cleanup standard set forth by the Department in these rules, or the property owner submits documentation establishing that the property has been fully and lawfully demolished, the Department will issue the property owner a certificate of delisting. The certificate will include the date the property was listed as a clandestine drug laboratory site and the date the property was delisted. ( )

**03. Voluntary Compliance**. When a property owner voluntarily reports his property as a clandestine drug laboratory, the property will be placed on the Clandestine Drug Laboratory Site Property List and will be delisted when the requirements of these rules are met. This action will afford the property owner immunity from civil actions as provided in Section 6-2608, Idaho Code. ( )

**121. -- 199. (RESERVED).**

**200. RESPONSIBILITIES OF THE PROPERTY OWNER.**
The owner of a listed property must: ( )

**01. Ensure the Vacancy of the Listed Property**. Ensure the property remains vacant until the property is delisted in accordance with Section 120 of these rules*; and* ( )

**02. Ensure That Cleanup Standards Are Met**. ( )

**a.** Ensure that the property is cleaned up to meet the cleanup standards in Section 500 of these rules and have the analytical results certified by a qualified industrial hygienist; or ( )

**b.** Ensure that the property is demolished, in lieu of clean up, as provided for in Section 6-2606, Idaho Code. Demolition and removal of materials must be conducted in compliance with applicable local, state, and federal laws and regulations*; and* ( )

**03. Provide the Department With a Written Report**. *P*rovide the Department with a written report in accordance with Section 600 of these rule*s.* ( )

**201. RESPONSIBILITIES OF THE QUALIFIED INDUSTRIAL HYGIENIST.**

**01. Qualified Industrial Hygienist Must Conduct Sampling**. A qualified industrial hygienist must conduct sampling in accordance with Section 400 of these rules and meet the reporting requirements under Section 600 of these rules. ( )

**02. Qualified Industrial Hygienist Must Be Independent**. To prevent any real or potential conflicts of interest, qualified industrial hygienists conducting the sampling must be independent of the company or entity conducting the cleanup or analysis or both. ( )

**202. DEPARTMENT LIST OF QUALIFIED INDUSTRIAL HYGIENISTS.**
The Department will maintain a list of qualified industrial hygienists on their website at: http://www.healthy.idaho.gov. ( )

**203. -- 299. (RESERVED).**

**300. CLEANUP PROCESS.**

**01. Cleanup Options for the Property Owner**. The property owner may choose to hire a cleanup contractor or conduct the cleanup himself. Cleanup must be conducted to reduce the concentration of methamphetamine to the standard specified in Section 500 of these rules. ( )

**02. Porous Materials Must Be Removed From The Property**. Porous materials must be removed from the property unless a qualified industrial hygienist certifies that the porous materials may remain on the property. ( )

**301. DISPOSAL OF CLEANUP WASTE.**
Waste disposal must be conducted in compliance with applicable local, state, and federal laws and regulations. ( )

**302. -- 399. (RESERVED).**

**400. CLEARANCE SAMPLING REQUIREMENTS.**

**01. Qualified Industrial Hygienist Required**. Sampling must be conducted by a qualified industrial hygienist to verify that cleanup standards have been met. ( )

**02. General Sampling Procedures**. Sample collection must be conducted according to the following minimum requirements: ( )

**a.** All sample locations must be photographed, and the photographs must be included in the final report required under Section 600 of these rules. ( )

**b.** All sample locations must be shown on a floor plan of the property, and the floor plan must be included in the final report required under Section 600 of these rules. ( )

**c.** All samples must be obtained, preserved, and handled in accordance with professional standards for the types of samples and analytical testing to be conducted under the chain of custody protocol. ( )

**d.** Samples must be analyzed by a laboratory certified by the U.S. Environmental Protection Agency or accredited by the American Industrial Hygiene Association *laboratory accreditation program*. ( )

**e.** All sampling locations must be numerically identified and the numbered sampling locations must be delineated on the floor plan, visible in photographs, and linked to samples. ( )

**f.** Whatman 40 ashless filter paper or equivalent must be used for all sampling. The filter paper must be wetted with analytical grade methanol, ethanol or distilled/deionized water. The filter paper must be blotted or wiped at least five (5) times in two (2) perpendicular directions within each sampling area. ( )

**g.** After sampling, the sample must be placed in a new, clean sample jar and sealed with a Teflon-lined lid. The sample jar must be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar must be handled according to professional standards. ( )

**h.** Discrete sampling must be used in areas expected to have the highest levels of contamination, as identified on the Department approved form. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 $cm^2$), or approximately *sixteen* (*16*) square inches) must be sampled from non-porous surfaces such as floors, walls, appliances, sinks, or countertops in each room. The sample area must be composed of no fewer than three (3) discrete samples. ( )

**i.** All other rooms of the property with lowest levels of contamination must be sampled using one (1) discrete sample per room. ( )

**j.** A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 $cm^2$), or approximately *sixteen* (*16*) square inches) must be sampled from the ventilation system in a location to be determined by the qualified industrial hygienist. ( )

**401. -- 499. (RESERVED).**

**500. CLEANUP STANDARDS.**

**01. Cleanup Standard for Methamphetamine**. A level of methamphetamine that does not exceed a concentration of point one (*0.*1) micrograms per one hundred (100) square centimeters (0.1 µg/100 $cm^2$) as demonstrated by clearance sampling conducted by a qualified industrial hygienist. ( )

**02. Other Cleanup Standards**. Standards may be established for the cleanup of other controlled substances found in clandestine drug laboratories on a case by case basis, based on an inventory of chemicals found, and after consultation with the Department, the property owner, law enforcement, and a qualified industrial hygienist. ( )

**501. -- 599. (RESERVED).**

**600. REPORTING REQUIREMENTS.**
In order for the property to be delisted, the property owner must provide the Department with an original or certified copy of the final report from the qualified industrial hygienist. The final report must include at least the following information: ( )

**01. Property Description**. The property description including physical street address (apartment or motel number, if applicable), city, zip code, legal description, ownership, and

number and type of structures present. ( )

**02. Documentation of Clearance Sampling Procedures**. Documentation of sampling procedures in accordance with the requirements under Section 400 of these rules. ( )

**03. Laboratory Results**. Analytical results from a laboratory as specified in Section 400 of these rules. ( )

**04. Qualifications of the Qualified Industrial Hygienist**. Qualified industrial hygienist statement of qualifications, including professional certification or documentation. ( )

**05. Signed Certification Statement**. A signed certification statement as stating: "I certify that the cleanup standard established by the Idaho Department of Health and Welfare has been met as evidenced by testing I conducted". ( )

**06. Demolition Documentation**. If the property owner chooses to demolish the property, documentation must be provided to the Department showing that the structure was completely and lawfully demolished and disposed of in compliance with local, state, and federal laws and regulations. ( )

**601. -- 999. (RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

### DOCKET NO. 16-0301-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, and 56-1004, Idaho Code; also 42 CFR 435.601, 42 CFR 457.50 and 457.310; PL 104-193, Section 103, and PL 106-113; Title XIX, Sections 1902 (a)(10)(A) and 1931(b)(1)(I) of the Social Security Act; and Title XXI, Sections 2102 and 2103 of the Social Security Act.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 192 through 198**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Peggy Cook at (208) 334-5815.

DATED this 24th day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
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P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

## *The Following Notice Was Published With The 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 Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, and 56-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

**Some crucial language currently used to guide program eligibility determination lives only in the Medicaid State Plan and in federal regulations. Putting this guidance language into rule makes the rules consistent with the Medicaid State Plan and with federal program requirements, clarifies language in rule so as to better support the Department's eligibility decisions in the Family Medicaid Programs, and improves the accuracy and consistency of rule application by Department staff**.

**The proposed language states**:

1. **That there is no asset transfer penalty for any Family Medicaid Program**;
2. **How self-employment income is calculated as required by federal law**;
3. **That Idaho Tribal TANF is excluded for Family Medicaid Program eligibility; and**
4. **The period of time a participant has to request a hearing as required by federal law**.

**In addition, the Idaho Legislature's Health Care Task Force Committee has recommended that the asset requirement and the minimum income requirement for CHIP B and the Children's Access Card be removed from the rule**.

**This proposed rule change allows more uninsured children to be eligible for CHIP B and the Children's Access Card, including children who were denied health coverage because their countable assets exceeded $5,000 while still being below 150% of the federal poverty guidelines**.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is being made only to make the rule consistent with current practice.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5815.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**100. PARTICIPANT RIGHTS.**
The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of their rights during the application process and eligibility reviews as listed in Subsections 100.01 through 100.0~~3~~4. ~~*(7-1-98)*~~(____)

**01. Right to Apply**. Any person has the right to apply for Health Care Assistance programs. Applications must be in writing on forms provided by the Department. (4-6-05)

**02. Right to Hearing**. Any participant can request a hearing to contest a Department decision in accordance with IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings". ~~*(4-6-05)*~~(____)

**03. Right to Request Reinstatement of Benefits**. Any participant has the right to request reinstatement of benefits until a hearing decision is made if the requests for the hearing and for the reinstatement are made within ten (10) days of the mailing of the notice of action. (____)

**0~~3~~4. Civil Rights**. Participants have civil rights under the U.S. and Idaho Constitutions, the Social Security Act, Title IV of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant parts of Federal and State laws. (7-1-98)

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

**300. FINANCIAL ELIGIBILITY.**

To be eligible for Health Care Assistance, a participant must meet the income and resource limits for at least one (1) coverage group. (4-6-05)

**01. Income and Resources**. Sections 300 through 706, of these rules, describe the types of income and resources considered in the eligibility determination process and how they are considered for all family medical coverage groups. (4-6-05)

**02. Income Disregards**. The income disregards described in Sections 357 through 36~~1~~2 and Section 388, of these rules, do not apply to CHIP A, CHIP B or the Children's Access Card program. ~~(4-6-05)~~(  )

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

**331. PROPERTY TRANSFER.**
When determining Medicaid eligibility for any family medical coverage group, there is no asset transfer penalty. (  )

**33~~1~~2. -- 344. (RESERVED).**

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

**352. SELF-EMPLOYMENT EARNED INCOME.**
Income from self-employment is treated as earned income. Compute self-employment income using Table 352.06. (3-30-01)

**01. Annualize Self-Employment Income**. Annualize the income if the participant has been self employed for more than one (1) year. (4-5-00)

**02. Average Self-Employment Income**. Average the income over the period of time the business has been operating if the participant has been self employed for less than one (1) year. (4-5-00)

**03. Annualized or Averaged Income Not Accurate**. If the annualized or averaged income does not reflect the participant's current or projected income from his business, anticipate self employment income and expenses. (4-5-00)

**04. Allowable Costs of Producing the Self-Employment Income**. Allowable costs of producing the self-employment income include: (4-5-00)

**a.** The cost of labor paid to persons not in the home. (4-5-00)

**b.** The cost of stock. (4-5-00)

**c.** The cost of material. (4-5-00)

**d.** The cost for rent and utilities, advertising, shipping and legal fees. (4-5-00)

**e.** The cost of seed and fertilizer. (4-5-00)

**f.** Interest paid to purchase income-producing property, including real estate. (4-5-00)

**g.** Insurance premiums. (4-5-00)

**h.** Taxes paid on income-producing property. (4-5-00)

**i.** Transportation, when a vehicle is an integral part of business activity. (4-5-00)

**j.** Expenses directly related to producing the goods or services and, without which, the goods or services could not be produced. (____)

**05. Non-Allowable Costs of Producing the Self-Employment Income**. The non-allowable costs of producing the self-employment income are: (4-5-00)

**a.** Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods. (4-5-00)

**b.** Net losses from previous periods. (4-5-00)

**c.** Federal, State, and local income taxes. (4-5-00)

**d.** Money set aside for retirement. (4-5-00)

**e.** ~~*Work-related p*~~Personal expenses such as lunches and transportation to and from work. ~~*(4-5-00)*~~(____)

**f.** Personal business and entertainment expenses, and personal transportation costs. (____)

**~~f~~g.** Depreciation. (4-5-00)

**06. Computing Self-Employment Income**.

| TABLE 352.06 - COMPUTING SELF-EMPLOYMENT INCOME | |
|---|---|
| **STEP** | **DESCRIPTION** |
| Step 1. | Add all self-employment income. |
| Step 2. | Add all capital gains to the self-employment income. The result is gross self-employment income. |

| | |
|---|---|
| Step 3. | Use the method of determining net self-employment income that most benefits the participant. Either subtract fifty percent of total gross self-employment income or subtract allowable costs of producing the self-employment income. Allowable costs are listed in Subsection 352.04. Do not subtract the non-allowable costs listed in Subsection 352.05. The result is available self-employment income. |

(3-30-01)

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

**353. OFFSETTING FARM SELF-EMPLOYMENT LOSSES.**
If a farmer's cost of producing self-employment income results in a loss, the loss must be subtracted from other countable income in the household. The losses from non-farm self-employment income must be subtracted first. If any loss remains, the remaining loss must be subtracted from the total of earned income. If any loss still remains, the remaining loss must be subtracted from the total of unearned income. Net losses from the self-employment income of a farmer are prorated over the year and do not carry over from year to year. ( )

**35~~3~~4. INCOME PAID UNDER CONTRACT.**
The earned income of an employee paid on a contractual basis is prorated over the period of the contract. (7-1-98)

**35~~4~~5. JOB TRAINING PARTNERSHIP ACT (JTPA) INCOME.**
Incentive income from the JTPA program is earned income. JTPA allowances are excluded if provided for specific goods and services. JTPA income, earned and unearned, paid to a minor child, is excluded with no time limits. (3-30-01)

**35~~5~~6. CHILD'S INCOME.**
A child's earned income is excluded for AFDC-related and FPG-related Medicaid coverage groups other than the Children's Health Insurance Program (CHIP) coverage group. Earned income of a child eligible under CHIP between the ages of eighteen (18) and nineteen (19) is counted. (3-30-01)

**35~~6~~7. IN-KIND INCOME.**
An individual receiving a service, benefit, or durable goods, instead of wages, is earning in-kind income. In-kind income is excluded. (3-30-01)

**35~~7~~8. EARNED INCOME DISREGARDS.**
Earned income disregards are subtracted from earnings after they are converted to a monthly amount, if the participant is not eligible without the disregards. The earned income disregards are the standard disregard, thirty dollars ($30) plus one-third (1/3) disregard, and the dependent care disregard. Disregards are subtracted in that order. (3-30-01)

**35~~8~~9. STANDARD EARNED INCOME DISREGARD.**
The first ninety dollars ($90) of earned income is disregarded. (3-30-01)

**3~~59~~60. THIRTY PLUS ONE-THIRD DISREGARD.**
Thirty dollars ($30) plus one-third (1/3) is disregarded when the earned income belongs to a child, a single parent, a relative caretaker receiving Medicaid, a pregnant woman, or a parent in a two (2) parent family receiving Medicaid because of unemployment or incapacity. The disregard is allowed only if earned income, minus ninety ($90) and allowable child care, is below the AFDC need standard for the family size. The disregard is not allowed after four (4) consecutive months. (7-1-98)

**36~~0~~1. THIRTY ONLY DISREGARD.**
Thirty dollars ($30) are disregarded for eight (8) months following the expiration of the thirty dollars ($30) plus one-third (1/3) disregard. (7-1-98)

**36~~1~~2. DEPENDENT CARE DISREGARD.**
A dependent care disregard is subtracted from earnings for dependents requiring care because of employment related reasons. Dependents can be either children or an incapacitated spouse. The amount disregarded is the anticipated cost of care or the maximum care allowance, whichever is less. Maximum dependent care allowances are listed in Subsections 36~~1~~2.01 and 36~~1~~2.02 of this rule. ~~(3-20-04)~~(____)

**01. Dependents Two Years of Age or Older**. Dependents, two (2) years of age or older, have up to one hundred seventy-five dollars ($175) disregarded when the caretaker relative works full-time, eighty (80) or more hours in a month. When the caretaker relative works part-time, less than eighty (80) hours in a month, up to one hundred fifteen dollars ($115) is disregarded. (3-20-04)

**02. Dependents Under Two Years of Age**. Dependents under two (2) years of age have up to two hundred dollars ($200) disregarded when the caretaker relative works full-time, eighty (80) or more hours per month. When the caretaker relative works part-time, less than eighty (80) hours in a month, up to one hundred thirty-five dollars ($135) is disregarded. (7-1-98)

**36~~2~~3. -- 369. (RESERVED).**

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

**386. COUNTING TEMPORARY ASSISTANCE TO FAMILIES IN IDAHO (TAFI) INCOME.**
Individuals and families are eligible for Medicaid coverage under the Low Income Families With Children group (MA or MU) as described in Section 413 of these rules, if: (3-20-04)

**01. TAFI and Idaho Tribal TANF Income**. Their only income is Idaho TAFI or Idaho Tribal TANF. ~~(3-20-04)~~(____)

**02. TAFI, ~~Income~~ Idaho Tribal TANF, and Other Unearned Income**. Their only income is a combination of Idaho TAFI, Idaho Tribal TANF, and other unearned income, but whose total income is equal to or less than the current Idaho TAFI maximum grant amount.

~~*(3-20-04)*~~(____)

**03. TAFI or Idaho Tribal TANF Income and Medicaid Eligible**. Their income includes Idaho TAFI or Idaho Tribal TANF and they meet the Medicaid financial eligibility criteria described in Sections 346 through 388 of these rules. ~~*(3-20-04)*~~(____)

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

**506. CHIP B.**
The CHIP B coverage group provides a limited benefit package as described in IDAPA 16.03.18, "CHIP B and Children's Access Card Rules," to children who apply and are found eligible during an open enrollment period. Children applying during closed enrollment periods are denied. A child may be eligible for the CHIP B coverage group if all non-financial and financial criteria are met. The child must also meet all the conditions listed in Subsections 506.01 through 506.12 of this rule. (4-6-05)

**01. Child's Income Eligibility**. The child's countable income must ~~*exceed one hundred fifty percent (150%) of the FPG for his budget unit size and must*~~ be less than or equal to one hundred eighty-five percent (185%) of the FPG for his budget unit size. There are no earned or unearned income disregards for CHIP B. ~~*(4-6-05)*~~(____)

**02. Asset Limit for a Child**~~***'s Resource Eligibility***~~. ~~*The child's countable resources must not exceed five thousand dollars ($5000).*~~ There is no asset test or resource limit for a child applying for CHIP B or the Children's Access Card. ~~*(4-6-05)*~~(____)

**03. No Creditable Health Insurance**. The child must not have creditable health insurance coverage. (4-6-05)

**04. Child Disenrolled to Qualify for CHIP B**. To be enrolled in CHIP B, a child must not have disenrolled from creditable insurance in the six (6) months prior to his application with the intent to qualify for CHIP B. (4-6-05)

**05. Not Eligible for Other Coverage**. The child must not be eligible for any Title XIX Medicaid coverage group or the CHIP A coverage group. (4-6-05)

**06. Dependents of State Employees Not Eligible**. The dependent child of a State employee is not eligible to enroll in CHIP B if the State employee is eligible to participate in state-sponsored health insurance. (4-6-05)

**07. Choice Agreement Signed**. A child who is eligible to participate in CHIP B and chooses Children's Access Card coverage must have a Choice Agreement signed and on file. If a Choice Agreement is not signed and on file, the child will be enrolled in the CHIP B program. The Choice Agreement will describe the differences between the CHIP B program and the Children's Access Card. (4-6-05)

**08. Choice Agreement Change Requested**. A CHIP B participant can move from CHIP B to the Children's Access Card at any time if the request is made in writing at least forty-five (45) days in advance of the change. A Children's Access Card participant who is income eligible for CHIP B can move to CHIP B at any time if the request is made in writing at least forty-five (45) days in advance of the change. The forty-five day (45) advance notice requirement will be waived if the child is moving from Children's Access Card to CHIP B for one (1) of the reasons listed in Subsection 505.07 of this rule. (4-6-05)

**09. CHIP B Participants Have Required Cost-Sharing Responsibilities**. The parent of a CHIP B participant must comply with any cost-sharing requirements described in IDAPA 16.03.18, "CHIP B and Children's Access Card Rules". Native American and Alaskan Eskimo children are not subject to cost-sharing requirements. (4-6-05)

**10. Other Eligibility Criteria**. All other eligibility requirements in this chapter are applicable to this coverage group unless the rule specifically excludes the CHIP B coverage group. (4-6-05)

**11. Enrollment Cap**. The number of individuals who can be enrolled in this program is subject to an enrollment cap specified by the Department. Individuals who meet all eligibility criteria for this program will be denied if there are no enrollment openings. (4-6-05)

**12. Child Entering the Home**. A child entering the home during a closed enrollment period will not be automatically enrolled in the CHIP B program. They may apply during open enrollment. (4-6-05)

**507. CHILDREN'S ACCESS CARD.**

The Children's Access Card coverage group provides insurance premium assistance to children who apply and are found eligible during an open enrollment period. A child receiving Children's Access card can change to CHIP A or B with a forty-five (45) day written notice, subject to the provisions in Subsections 505.07 and 506.08 of these rules. (4-6-05)

**01. Children's Access Card Eligibility**. A child is eligible for the Children's Access Card if all eligibility requirements for ~~*either*~~ Low Income Child, CHIP A, or CHIP B listed in Sections 501, 505, and 506 of these rules are met and if the person meets all of the conditions specified in Subsections 507.02 through 507.06 of these rules. ~~*(4-6-05)*~~(  )

**02. Co-Pays and Deductibles**.The family is responsible for the co-pays and deductibles required by their private insurance. (4-6-05)

**03. Choice Agreement**. The family must have a signed Choice Agreement on file requesting Children's Access Card. If the family does not sign a Choice Agreement they will be enrolled in the CHIP coverage group they are eligible for. The Choice Agreement form will describe the differences between the CHIP B program and the Children's Access Card. (4-6-05)

**04. Enrollment Cap**. The number of individuals who can be enrolled in this program is subject to an enrollment cap specified by the Department. Individual's who meet all eligibility criteria for this program will be denied if there are no enrollment openings. (4-6-05)

**05. CHIP Coverage Within Sixty Days of Application Date**. A person applying for the Children's Access Card program, who did not indicate on the Choice Agreement Form that he wanted CHIP coverage until his private insurance began, may receive coverage if he requests CHIP within sixty (60) days following the date of his application. (4-6-05)

**06. Eligibility Outside the Open Enrollment Period**. If the insurance carrier will add the child to the health insurance plan, an eligible child may be added to the Children's Access Card program outside of an open enrollment period when one or both of the following conditions exist: (4-6-05)

**a.** The child is living in or entering the home of a family who currently has a child enrolled in the Children's Access Card program; or (4-6-05)

**b.** The enrollment cap has been met. (4-6-05)

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

**603. MINOR PARENT (MP) LIVING WITH PARENTS.**
A minor parent (MP) who lives with her parents may be eligible for Medicaid for herself and her child. A MP is a child under the age of eighteen (18) who is pregnant or has a child. The MP's parent(s) are not required to apply. The MP's parent(s) income is deemed to the MP. The MP must meet financial and non-financial criteria. The MP's parental income is deemed as shown in Subsections 603.01 through 603.04. (7-1-98)

**01. Standard Disregard**. From earned income, subtract the standard work disregard of ninety dollars ($90). (7-1-98)

**02. Child Care Costs**. From earned income subtract child care costs up to the maximums in Section 36~~1~~2. ~~(7-1-98)~~(  )

**03. Unearned Income**. To earned income, add the amount of unearned income. (7-1-98)

**04. Parental Family Deduction**. From the total income, subtract an amount equal to the AFDC Need Standard or the FPG for the MP's parent's family size. This deduction is determined by the MP's coverage group. In calculating the family size, exclude the MP and her children. (7-1-98)

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

### DOCKET NO. 16-0304-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. This pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, Idaho Code, and 7 CFR.

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

**The pending rule is being adopted as proposed. In accordance with 67-5228, Idaho Code, a typographical error was corrected. In Subsection 011.09, in the definition of Fair Hearing the word "in" has been corrected to read "is". In the second sentence of Section 532, the word "members" was corrected to read "member." The complete text of the proposed rule was published in the Wednesday, October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 199 through 236**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no anticipated fiscal impact to the state general fund as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Chris Werner at (208) 334-5746.

DATED this 28th day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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## *The Following Notice Was Published With The Temporary And Proposed Rule*

**EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2005**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and 7 CFR.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

**These changes will reduce the federal Quality Control Food Stamp error rate and comply with federal law. These changes will benefit those eligible for food stamps by providing administrative consistency throughout the state and uninterrupted benefits. The changes to these rules include: 1) Extend the Food Stamp certification period for families with no income from three to six months. 2) To appropriately exclude grants from the Housing and Urban Development's (HUD) Family Self Sufficiency Initiative to comply with federal law. 3) Modification and compliance with federal regulations, make definitions clearer, and reduce confusion and inconsistencies in the rules**.

**TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: These rule changes are necessary for compliance with deadlines in governing law for this federal program, and confers a benefit**.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: There is no anticipated fiscal impact to the state general fund as a result of these rule changes.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to federal law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Chris Werner at (208) 334-5746.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**000. LEGAL AUTHORITY.**
The Idaho Legislature has granted the Department of Health and Welfare authority to enter into contracts and agreements with the Federal government to carry out the purposes of any Federal acts pertaining to public assistance or welfare services. The Department of Health and Welfare has authority to make rules governing the administration and management of the Department's business, pursuant to Sections 56-203~~*and 39-106(1)(a)*~~, Idaho Code. ~~*(6-1-94)*~~(10-1-05)T

**001. TITLE, SCOPE, AND PURPOSE.**
~~*These rules contain the requirements for application and eligibility for the Food Stamp Program, administered in Idaho by the Department of Health and Welfare for the United States Department of Agriculture. The purpose of the Food Stamp Program is to raise the nutritional level among low-income households whose limited food purchasing power contributes to hunger and malnutrition among members of such households. The process of determining the need for and the level of assistance is the certification procedure. The purpose of these rules is to provide the regulatory basis for that procedure. These rules are to be cited, in full, as Idaho Department of Health and Welfare Rules, IDAPA 16.03.04, "Rules Governing the Food Stamp Program in Idaho".*~~ ~~*(6-1-94)*~~

**01.** **Title**. These rules are cited as IDAPA16.03.04 "Rules Governing the Food Stamp Program in Idaho". (10-1-05)T

**02.** **Scope**. These rules contain the requirements for application and the eligibility criteria to receive benefits in the Food Stamp Program. These rules are administered by the Department of Health and Welfare for the United States Department of Agriculture. (10-1-05)T

**03.** **Purpose**. The purpose of these rules is to raise the nutritional level among low-income households whose limited food purchasing power contributes to hunger and malnutrition among members of such households. These rules also provide the regulatory basis for that procedure. (10-1-05)T

## *Section 002 has been renumbered to and moved Section 010*

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations associated with this chapter of rules. (10-1-05)T

## *Section 003 has been renumbered and moved to Section 013*

**003. ADMINISTRATIVE APPEALS.**
Appeals and proceedings are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (10-1-05)T

**004. INCORPORATION BY REFERENCE.**
No documents have been incorporated into this chapter of rules. (10-1-05)T

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

**01. Office Hours**. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (10-1-05)T

**02. Mailing Address**. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-05)T

**03. Street Address**. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho83702. (10-1-05)T

**04. Telephone**. (208) 334-5500. (10-1-05)T

**05. Internet Website Address**. Department Internet address is: www.healthandwelfare.idaho.gov. (10-1-05)T

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

**01. Confidential Records**. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. (10-1-05)T

**02. Public Records**. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state and federal law. (10-1-05)T

**00~~4~~7. -- 008. (RESERVED).**

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

**~~002~~010.DEFINITIONS A THROUGH D.**

For the Food Stamp Program, the following definitions apply: ~~*(6-1-94)*~~(10-1-05)T

**01. Adequate Notice**. Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

**02. Administrative Error Claim**. A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

**03. Aid to the Aged, Blind and Disabled (AABD)**. Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (10-1-05)T

**0~~3~~4. Applicant**. A person applying for Food Stamps. (6-1-94)

**0~~4~~5. Application For Participation**. The application form filed by the head of the household or authorized representative. (6-1-94)

**06. Application for Recertification**. When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (10-1-05)T

**0~~5~~7. Authorized Representative**. A person designated by the household to act on behalf of the household to apply for or ~~*get*~~ receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. ~~*(6-1-94)*~~(10-1-05)T

**0~~6~~8. Battered Women And Children's Shelter**. A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

**0~~7~~9. Boarder**. Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

**~~08~~10. Boarding House**. A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

**~~09~~11. Categorical Eligibility**. If all household members receive or are authorized to ~~*get*~~ receive monthly cash payment through TAFI, AABD ~~*and/*~~or SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. ~~*(7-1-98)*~~(10-1-05)T

**1~~0~~2. Certification Determination**. Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure prompt, efficient and correct certifications. (6-1-94)

**13. Certification Period**. The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (10-1-05)T

**1~~1~~4. Claim Determination**. The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

**1~~2~~5. Change Reporting Household (CR)**. A household ~~*that meets one (1) of the following conditions:*~~ in which all members are elderly or disabled. ~~*(4-6-05)*~~(10-1-05)T

~~***a.*** *No member of the household has income;* *(4-6-05)*~~

~~***b.*** *Income cannot reasonably be anticipated the month after approval of Food Stamp benefits; or* *(4-6-05)*~~

~~***c.*** *All adult household members are elderly or disabled.* *(4-6-05)*~~

**1~~3~~6. Client**. A person entitled to or receiving Food Stamps. (6-1-94)

**1~~4~~7. Coupon**. Any coupon, stamp, access device, or certificate issued under the Food Stamp Program for the purchase of food. (4-6-05)

**1~~5~~8. Coupon Allotment**. The total dollar amount of Food Stamps allowed the household during the full or prorated month. (6-1-94)

**1~~6~~9. Department**. The Idaho Department of Health and Welfare. (6-1-94)

**20. Desk Review**. A desk review is a recertification that may or may not include talking to the participant. (10-1-05)T

**~~17~~21. Disqualified Household Members**. Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

**a.** Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

**b.** Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

**c.** Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

**d.** Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

**e.** Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)

**f.** Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)

**g.** Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)

**h.** Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)

**i.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)

**~~18~~22. Documentation**. The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

**~~19~~23. Drug Addiction Or Alcoholic Treatment Program**. Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

**011. DEFINITIONS E THROUGH L.**
For the Food Stamp Program, the following definitions apply: (10-1-05)T

**~~2~~01. EBT Handbook**. Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "Rules Governing Electronic Benefit Transfer (EBT) of Public Assistance, Food Stamps, and Child Support". (7-1-98)

**~~21~~02. Electronic Benefit Transfer**. A method of issuing Food Stamps to an eligible household. (7-1-98)

**~~22~~03. Eligible Foods**. Any food or food product for human consumption excluding alcohol, tobacco, and hot foods and hot food products ready for immediate consumption. Eligible foods include: (6-1-94)

**a.** Garden seeds and plants to grow food for human consumption. (6-1-94)

**b.** Meals prepared for the elderly at a communal dining facility. (6-1-94)

**c.** Meals prepared and delivered by an authorized meal delivery service. (6-1-94)

**d.** Meals served to a narcotics addict or alcoholic who participate and reside in a rehabilitation center program. (6-1-94)

**e.** Meals prepared and served by an authorized group living center to blind or disabled residents who receive benefits under Titles I, II or X, XIV, XVI of the Social Security Act. (6-1-94)

**f.** Meals prepared and served at a shelter for battered women and children to eligible residents. (6-1-94)

**g.** Meals prepared and served by an authorized public or private nonprofit establishment to homeless Food Stamp participants. (6-1-94)

***23*04. Eligible Household**. A household living in a ~~*project area*~~ Idaho and meeting the eligibility criteria in these rules. ~~*(6-1-94)*~~(10-1-05)T

***24*05. Emancipated Minor**. A person, age fourteen (14) but under age eighteen (18), who has been married or whose circumstances show the parent and child relationship has been renounced such as a child in the military service. (6-1-94)

***25*06. Enumeration**. The requirement that each household member provide the Department either their Social Security Number (SSN) or proof that they have applied. (6-1-94)

***26*07. Exempt**. A household member who is not required to register for or participate in the JSAP program is exempt. A household member who is not required to register for work is exempt. (6-1-94)

~~***27. Extended Certification Household (EC)**. A household in which all adult members are elderly or disabled. (4-6-05)*~~

***2*08. Farm Bill**. Public Law 107-171, "Farm Security and Rural Investment Act of 2002". (4-6-05)

**09. Fair Hearing**. A fair hearing is an appeal of a Department decision. See Section 003 of these rules for appeals. (10-1-05)T

***29*10. Federal Fiscal Year**. The federal fiscal year (FFY) is from October 1 to September 30. (6-1-94)

***30*11. Field Office**. A Department of Health and Welfare service delivery site. (4-6-05)

***3*12. Food Assistance**. The Department's Food Stamp Program or Food Distribution Program. (6-1-94)

~~***32. General Assistance**. Cash or other aid, excluding in-kind assistance, financed by Federal, state or local government and provided to cover living expenses or other basic needs. This cash or other aid is intended to promote the health and well-being of recipients. (6-1-94)*~~

**13.** **Food and Nutrition Service (FNS)**. The Food and Nutrition Service of the U.S. Department of Agriculture. This is the federal entity that administers the Food Stamp program. (10-1-05)T

~~33~~**14.** **Group Living Arrangement**. A public or private nonprofit residential setting serving no more than sixteen (16) residents. The residents are blind or disabled and receiving benefits under Title II or XVI of the Social Security Act, certified by the Department under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the Secretary of USDA to be comparable to Section 1616(e) of the Social Security Act. (6-1-94)

~~34~~**15.** **Homeless Person**. A person: (6-1-94)

**a.** Who has no fixed or regular nighttime residence. (6-1-94)

**b.** Whose primary nighttime residence is a temporary accommodation for not more than ninety (90) days in the home of another individual or household. (7-1-98)

**c.** Whose primary nighttime residence is a temporary residence in a supervised public or private shelter providing temporary residence for homeless persons. (6-1-94)

**d.** Whose primary nighttime residence is a temporary residence in an institution which provides temporary residence for people who are being transferred to another institution. (6-1-94)

**e.** Whose primary nighttime residence is a temporary residence in a public or private place which is not designed or customarily used as sleeping quarters for people. (6-1-94)

~~35~~**16.** **Homeless Meal Provider**. A public or private nonprofit establishment or a profit making restaurant which provides meals to homeless people. The establishment or restaurant must be approved by the Department and authorized as a retail food store by FCS. (7-1-98)

~~36~~**17.** **Identification Card**. The card identifying the bearer as eligible to ~~get~~ receive and use Food Stamps. ~~(6-1-94)~~(10-1-05)T

~~37~~**18.** **Inadvertent Household Error Claim (IHE)**. A claim resulting from an overissuance, caused by the household's misunderstanding or unintended error. A household error claim pending an intentional program violation decision. (6-1-94)

~~38~~**19.** **Income And Eligibility Verification System (IEVS)**. A system of information acquisition and exchange for income and eligibility verification which meets Section 1137 of the Social Security Act requirements. (6-1-94)

~~39~~**20.** **Indian General Assistance**. The general assistance program administered by the Bureau of Indian Affairs. (6-1-94)

~~40~~**21.** **Institution of Higher Education**. Any institution which normally requires a high school diploma or equivalency certificate for enrollment. These institutions include colleges,

universities, and business, vocational, technical, or trade schools at the post-high school level. (7-1-97)

***41*22. Institution of Post Secondary Education**. Educational institutions normally requiring a high school diploma or equivalency certificate for enrollment, or admits persons beyond the age of compulsory school attendance. The institution must be legally authorized by the state and provide a program of training to prepare students for gainful employment. ~~(6-1-94)~~(10-1-05)T

***4*23. Legal Noncitizen**. A qualified alien under 8 USC Section 1641(b). (4-6-05)

**24. Limited Utility Allowance (LUA)**. Utility deduction given to a food stamp household that has a cost for more than one (1) utility. This includes electricity and fuel for purposes other than heating or cooling, water, sewage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. (10-1-05)T

**012. DEFINITIONS M THROUGH Z.**
For the Food Stamp Program, the following definitions apply: (10-1-05)T

***43*01. Migrant Farmworker Household**. A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

**02. Minimum Utility Allowance (MUA)**. Utility deduction given to a food stamp household that has a cost for one (1) utility. (10-1-05)T

***44*03. Nonexempt**. A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

***45*04. Nonprofit Meal Delivery Service**. A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

***46*05. Overissuance**. The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

***47*06. Parental Control**. Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)

***48*07. Participant**. A person who receives Food Stamp benefits. (4-6-05)

***49*08. Program**. The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

~~***50. Project Area**. The state of Idaho has been approved as one (1) project area by the Department of Agriculture.~~ ~~(6-1-94)~~

***51*09. Public Assistance**. Public assistance means Temporary Assistance for Families in

Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)

**10.** **Recertification**. A recertification is a process for determining ongoing eligibility for Food Stamps. (10-1-05)T

~~**52**~~**11.** **Retail Food Store**. A retail food store, for Food Stamp purposes means: (6-1-94)

**a.** An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)

**b.** Public or private communal dining facilities and meal delivery services. (6-1-94)

**c.** Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)

**d.** Public or private nonprofit group living arrangements. (6-1-94)

**e.** Public or private nonprofit shelters for battered women and children. (6-1-94)

**f.** Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)

**g.** A farmers' market. (6-1-94)

**h.** An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)

~~**53**~~**12.** **Seasonal Farmworker Household**. A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)

~~**54**~~**13.** **Simplified Reporting Household (SR)**. All households ~~*expected to have earned or unearned income during the month following the month in which the household was approved to receive Food Stamp benefits*~~ except those in which all members are elderly or disabled. ~~*(4-6-05)*~~(10-1-05)T

~~**55**~~**14.** **Spouse**. Persons who are living together, married or free to marry, and are holding themselves out as man and wife. (4-6-05)

**15.** **Standard Utility Allowance (SUA)**. Utility deduction given to a food stamp household that has a cost for heating or cooling. (10-1-05)T

~~**5**~~**16.** **State**. Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)

~~**5**~~**17.** **State Agency**. The Idaho Department of Health and Welfare. (6-1-94)

~~**5**~~**18.** **Student**. An individual between the ages of eighteen (18) and fifty (50), physically

and mentally fit, and enrolled at least half-time in an institution of higher education. (6-1-94)

***5***19. **Supplemental Security Income (SSI)**. Monthly cash payments under Title XVI of the Social Security Act. Payments include state or ***F***federally administered supplements***, such as AABD payments in Idaho***. ***(6-1-94)***(10-1-05)T

20. **Systematic Alien Verification for Entitlements (SAVE)**. The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (10-1-05)T

***60***21. **Timely Notice**. Notice that is mailed at least ten (10) days before the effective date of an action taken by the Department. (4-6-05)

***61***22. **Twelve Month Contact**. For households that have a twenty-four (24) month certification period, Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)

23. **Tribal General Assistance**. Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (10-1-05)T

***62***24. **Verification**. The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)

***63***25. **Verified Upon Receipt**. Food stamp benefits are adjusted on open food stamp cases when information is received from "verified upon receipt" sources. Information "verified upon receipt" is received from a manual query or automated system match with the Social Security Administration, the Idaho Department of ***Labor and*** Commerce and Labor for unemployment benefits, or Homeland Security query for citizenship status.\ ***(4-6-05)***(10-1-05)T

***003***013.**ABBREVIATIONS A THROUGH G.**
For the purposes of the Food Stamp Program, the following abbreviations are used.
***(6-1-94)***(10-1-05)T

**01.** **AABD**. Aid to the Aged, Blind and Disabled. (9-1-94)

**02.** **ABAWD**. Able bodied adults without dependents. (7-1-98)

**03.** **AE**. Administrative Error. (3-15-02)

**04.** **AFA**. Application for Assistance. (7-1-98)

**05.** **ASVI**. Alien Status Verification Index. (6-1-94)

**06.** **A/R**. The applicant or recipient. (6-1-94)

**07.** **BEER**. Beneficiary Earnings Exchange Report. (6-1-94)

**08.** **BENDEX**. Beneficiary Data Exchange. (6-1-94)

**09.** **BIA**. Bureau of Indian Affairs. (6-1-94)

**10.** **BIA GA**. Bureau of Indian Affairs-general assistance. (6-1-94)

**11.** **CIP**. The Crisis Intervention Program administered by the Community Services Administration (CSA). (6-1-94)

**12.** **COLA**. Cost of Living Allowance. COLA data comes from SSA. (4-6-05)

**13.** **CSA**. The Community Services Administration of the U.S. Department of Housing and Urban Development. (6-1-94)

**14.** **CSS**. Bureau of Child Support Services. (7-1-98)

**15.** **DHW**. The Department of Health and Welfare in Idaho. (6-1-94)

**16.** **DMV**. Department of Motor Vehicles in Idaho. (10-1-05)T

**1~~6~~7.** **EBT**. Electronic Benefit Transfer. (7-1-98)

~~***17.*** ***EE**. Eligibility Examiner.*~~ ~~*(6-1-94)*~~

**18.** **EFNEP**. Expanded Food and Nutrition Education Program. (6-1-94)

**19.** **EWS**. Enhanced Work Services. (4-6-05)

**20.** **FNS**. The Food and Nutrition Service of the U.S. Department of Agriculture. ~~*This is the federal entity that administers the Food Stamp program.* *(4-6-05)*~~(10-1-05)T

**21.** **FFY**. Federal fiscal year. (6-1-94)

**22.** **FmHA**. Farm Home Administration. (8-1-94)

**23.** **FMV**. Fair market value. (6-1-94)

**24.** **FPG**. Federal Poverty Guideline(s). (4-6-05)

**25.** **FQC**. Federal Quality Control. (6-1-94)

~~***26.*** ***GA**. General assistance.* *(6-1-94)*~~

**2~~7~~6.** **HUD**. The U.S. Department of Housing and Urban Development. (6-1-94)

**014. ABBREVIATIONS I THROUGH Z.**
For the purposes of the Food Stamp Program, the following abbreviations are used. (10-1-05)T

**01.** **ICCP**. Idaho Child Care Program. (10-1-05)T

**02.** **ICSES**. Idaho Child Support Enforcement System. (10-1-05)T

~~**28**~~**03.** **IEVS**. Income and Eligibility Verification Systems. (6-1-94)

~~**29**~~**04.** **IHE**. Inadvertent household error. (6-1-94)

~~**30**~~**05.** **INS**. Immigration and Naturalization Service, in 2003, became the United States Citizenship and Immigration Service (USCIS), a Division of Homeland Security. ~~(6-1-94)~~(10-1-05)T

~~**31**~~**06.** **INA**. Immigration and Nationality Act. (4-6-05)

~~**32**~~**07.** **IPV**. Intentional program violation. (6-1-94)

~~**33**~~**08.** **IRS**. Internal Revenue Service. (6-1-94)

~~**34**~~**09.** **JSAP**. Job Search Assistance Program. (6-1-94)

~~**35**~~**10.** **LUA**. Limited utility allowance. ~~*Household has a cost for more than one (1) utility. This includes electricity and fuel for purposes other than heating or cooling, water, sewage, well and septic tank installation and maintenance, telephone, and garbage or trash collection.*~~ ~~(4-6-05)~~(10-1-05)T

~~**36**~~**11.** **MUA**. Minimum utility allowance. ~~*Household has a cost for one (1) utility.*~~ ~~(4-6-05)~~(10-1-05)T

**12.** **NADA**. National Automobile Dealer's Association. (10-1-05)T

~~**37**~~**13.** **PA**. Public Assistance. (6-1-94)

~~**38**~~**14.** **RSDI**. Retirement, Survivors, Disability Insurance received from SSA. (6-1-94)

~~**39**~~**15.** **SAVE**. Systematic Alien Verification for Entitlements. ~~*The SAVE program enables federal, state, and local government agencies to obtain immigration status information they need in order to determine an applicant's eligibility for many public benefits, including Food Stamps.*~~ ~~(4-6-05)~~(10-1-05)T

~~**40**~~**16.** **SAW**. Special Agricultural Worker. (6-1-94)

~~**41**~~**7.** **SDX**. State Data Exchange. (6-1-94)

~~**42**~~**18.** **SQC**. State Quality Control. (6-1-94)

~~**43**~~**19.** **SRS**. Self Reliance Specialist. (7-1-98)

~~**44**~~**20.** **SUA**. Standard utility allowance. ~~*Household has a cost for heating or cooling.*~~

~~*(4-6-05)*~~(10-1-05)T

**~~*45*~~21.** **SSA**. Social Security Administration. (6-1-94)

**~~*46*~~22.** **SSI**. The Federal Supplemental Security Income Program for the aged, blind or disabled. (6-1-94)

**~~*47*~~23.** **SSN**. Social Security number. (6-1-94)

**~~*48*~~24.** **SWICA**. State Wage Information Collection Agency. (6-1-94)

**~~*49*~~25.** **TAFI**. Temporary Assistance for Families in Idaho. (7-1-98)

**~~*50*~~26.** **TOP**. Treasury Offset Program. (3-15-02)

**~~*51*~~27.** **TPQY**. Third Party Query. (6-1-94)

**~~*5*~~28.** **UI**. Unemployment Insurance. (6-1-94)

**~~*53*~~29.** **USDA**. United States Department of Agriculture. (6-1-94)

**~~*54*~~30.** **VA**. The Veterans Administration. (6-1-94)

**~~*55*~~31.** **WIA**. The Workforce Investment Act. (3-15-02)

**~~*56*~~32.** **WIC**. The special supplemental Food Program for Women, Infants, and Children. (6-1-94)

**01~~*0*~~5. -- 099. (RESERVED).**

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

**110. APPLICANTS WHO MOVE.**
When a Food Stamp applicant moves within Idaho, the sending and receiving Field Offices must act to transfer the case and change the address. ~~*(6-1-94)*~~(10-1-05)T

**01. Duties of Sending Field Office**. If an applicant household is moving and submits its application to a Field Office other than the one serving the area where it is moving, the sending office must transfer the case. Duties of the sending Field Office are: (6-1-94)

**a.** Give household new field office information. The sending Field Office must give the household the address and telephone number of the correct Field Office. (6-1-94)

**b.** Forward application. The sending Field Office must offer to forward the application and case record to the proper Field Office. The application and case record must be

sent the same day the contact is made with the wrong Field Office. (6-1-94)

**c.** Inform applicant. The sending Field Office must tell the household its application has been filed and will be forwarded to the proper Field Office. (6-1-94)

**d.** Mail application same day as received. If the application was mailed to the wrong Field Office, it must be mailed to the proper Field Office the same day it is received. (6-1-94)

**02. Duties of Receiving Field Office**. The receiving Field Office must schedule an interview with the applicant household. The interview may be face-to-face, by telephone or by home visit. The application must be approved or denied within the specified time limits. (6-1-94)

**03. Duties When Applicant Moves Out of Idaho**. If all members of a Food Stamp applicant household move outside of Idaho, determine eligibility for the month(s) in which they resided in Idaho, as long as duplicate participation in another state does not occur. Close the case effective the end of the month in which the household moves out of Idaho. A closure notice is not required. (10-1-05)T

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

**115. AUTHORIZED REPRESENTATIVE.**
The household can choose a nonhousehold member to act as an authorized representative. The household can designate in writing another responsible household member or a responsible adult outside the household as ~~*the*~~ an authorized representative. An adult employee, of an authorized drug addiction or alcoholic treatment and rehabilitation center ~~*may act as an authorized representative for the household. An adult employee of*~~ or an authorized group living arrangement center, may act as an authorized representative for the household. Conditions for an authorized representative are: ~~*(4-5-00)*~~(10-1-05)T

**01. Designating Authorized Representative**. When household members cannot apply for, ~~*get*~~ receive or use Food Stamps, the household can choose an authorized representative. The household must appoint the authorized representative in writing. The authorized representative should be aware of household circumstances. The household should prepare or review the AFA when the authorized representative will be interviewed. ~~*(4-5-00)*~~(10-1-05)T

**02. Persons Who Cannot be an Authorized Representative**. Persons with a conflict of interest may not act as an authorized representative without the Department's written approval. The Field Office supervisor must determine if no one else is available and give written approval. Persons with a conflict of interest are listed below: (6-1-94)

**a.** Retailers allowed to accept Food Stamps. (6-1-94)

**b.** Department employees involved in the certification or issuance process. (6-1-94)

**c.** A person disqualified for IPV during the penalty period, unless he is the only adult

household member and no one else is available. (6-1-94)

**d.** Homeless meal providers. (6-1-94)

**03. Department Responsibilities**. The Department will: (6-1-94)

**a.** Make sure authorized representatives are properly selected. (6-1-94)

**b.** Record the representative's name in the case record. (6-1-94)

**c.** Not place limits on the number of households a representative may represent. (6-1-94)

**d.** Inform the household it will be liable for any overissuance resulting from wrong information given by the representative. (6-1-94)

**e.** Make sure the household freely requested the representative. (6-1-94)

**f.** Make sure the household is getting the correct amount of benefits. (6-1-94)

**g.** Make sure the representative is properly using the Food Stamps. (6-1-94)

**04. Authorized Representative Removed**. The Department may remove an authorized representative for up to one (1) year if the person knowingly distorts a household's circumstances, gives false information, or improperly uses the Food Stamps. This provision does not apply to drug and alcohol centers and group homes. Written notice must be sent to the household and the authorized representative thirty (30) days before the penalty begins. The notice must list: (6-1-94)

**a.** The proposed action. (6-1-94)

**b.** The reason for the action. (6-1-94)

**c.** The right to a fair hearing. (6-1-94)

**d.** The name and telephone number to contact for more information. (6-1-94)

~~***05. Named on ID Card**. The name of the authorized representative must be on the ID card. (6-1-94)*~~

**0~~6~~5. Contingency Designation**. A household member able to apply for and get Food Stamps can name an authorized representative, in writing, in case the household becomes unable to use Food Stamps. (6-1-94)

**0~~7~~6. Emergency Designation**. The household may choose an emergency authorized representative if unforeseen circumstances arise. The household must complete a statement appointing the person as the authorized representative. The authorized representative must sign the statement. ~~*The client listed on the ID card must sign the statement. The emergency authorized*~~

~~*representative can present the ID card and signed statement to act on the household's behalf and to obtain the Food Stamp allotment.*~~ The household cannot be required to go to the Field Office to complete this statement. ~~*(6-1-94)*~~(10-1-05)T

**116. -- 119. (RESERVED).**

**120. HOUSEHOLD INTERVIEWS.**
The Department must conduct an interview with the applicant, a member of the household, or ~~*its*~~ the authorized representative~~ *at least once every twelve (12) months*~~. Interviews must be conducted either face-to-face or via telephone, based on hardship criteria evident in the case record. ~~*A household member or an authorized representative can be interviewed.*~~ The applicant may bring any other person to the interview. The Department does not require households to report for an in-office interview during their certification period. The frequency of the interview must be as follows: ~~*(4-6-05)*~~(10-1-05)T

**01. Twenty-Four Months**. The interview must be at least once every twenty-four (24) months for households certified for twenty-four (24) months. (10-1-05)T

**02. Twelve Months**. The interview must be every twelve (12) months for all other households. (10-1-05)T

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

**126. SPECIAL INTERVIEW SCHEDULING.**
In offices with more than two (2) ~~*Examiners*~~ interview staff, interviews must be available during the lunch period. Available interview times ~~*to reduce the household's absence from work*~~ must be posted. ~~*(6-1-94)*~~(10-1-05)T

**127. -- 132. (RESERVED).**

**133. VERIFICATION.**
The Department must have verification to support the benefit determination. Verification is third party data or documents used to prove the accuracy of AFA information. The Department must give the applicant household a clear written statement of the proof to bring to the interview. The statement will indicate the Department will help the household get proof if needed. The Department must give the ~~*applicant*~~ household ten (10) calendar days from the request date to provide proof. Proof can be provided in person, by mail or by an authorized representative. If the proof supplied is faulty, not complete or not consistent, the Department can require further proof. The Department must notify the household of any other steps necessary to complete the application process. ~~*(6-1-94)*~~(10-1-05)T

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

**135. SOURCES OF VERIFICATION.**
The following sources of verification must be considered: (6-1-94)

**01. Written Confirmation**. ~~*The*~~ A primary source of proof is written confirmation of circumstances. Written proof includes driver's licenses, work or school identification, birth certificates, wage stubs, award letters, court orders, divorce decrees, separation agreements, insurance policies, rent receipts and utility bills. Acceptable proof is not limited to a single document. Proof can be obtained from the household or other sources. Secondary sources of proof must be used to verify a household's circumstances if the primary source cannot be obtained or does not prove eligibility or benefit level. ~~*(7-1-97)*~~(10-1-05)T

**02. Collateral Contacts**. A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. Acceptable collateral contacts include employers, landlords, migrant service agencies, friends, neighbors and relatives not living in the household. The collateral contact must accurately confirm the household's statement. The Department is responsible for getting proof from the collateral contact. The household usually names the collateral contact. The household may request help in selecting a collateral contact. (6-1-94)

~~***03. Verified Upon Receipt****. Information verified upon receipt is data from BENDEX and SDX issued by the SSA, data from SAVE issued by INS, and data regarding Unemployment Compensation issued by the Department of Commerce and Labor. Quarterly wage match data, new hire matches, and unearned income matches from the SSA are not considered verified upon receipt.* *(4-6-05)*~~

**0~~4~~3. Automated System ~~*Records*~~ Data**. ~~*System records include ICCP and ICSES system information, quarterly wage match data, new hire matches, unearned income matches from the SSA, and Department of Commerce and Labor records.*~~ Information that is obtained through interfacing with other government agency computer systems. ~~*(4-6-05)*~~(10-1-05)T

**0~~5~~4. Home Visits**. Home visits may be used to get proof needed for Food Stamp eligibility only when the proof cannot be obtained otherwise. Home visits will be used on a case-by-case basis only when proof supplied by the household is not sufficient. Home visits must be scheduled in advance with the client. (3-15-02)

**136. REQUIRED PROOF.**
The Department must ~~*receive proof for items listed below*~~ have verification to support the benefit determination. The Department will inform the household what proof is required in accordance with 7 CFR Part 273.2(f). ~~*(4-6-05)*~~(10-1-05)T

~~***01. Idaho Residency****. Proof of Idaho residency includes rent and mortgage payments, utility expenses and documents used to establish identity as described in Subsection 136.02 of this rule. Proof of Idaho residency is not required for unusual cases such as homeless households, migrant farmworkers or new arrivals to a service delivery area.* *(4-6-05)*~~

~~***02. Identity**. Proof includes a driver's license, school identification or a birth certificate. The Department can accept other proof of identity. (4-6-05)*~~

~~***03. SSN**. SSNs are verified by submitting the SSNs reported by the households to the SSA. Certification cannot be delayed to an otherwise eligible household solely to verify an SSN. If a person is unable to provide an SSN or does not have an SSN, the Department must require proof of application for an SSN prior to certifying the person. A newborn may participate when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next recertification or six (6) months after the month the child was born, whichever is later. (4-6-05)*~~

~~***04. Immigration Status**. Proof includes legal non-citizen registration cards, passports, and information from Systematic Alien Verification for Entitlements (SAVE) from the Alien Status Verification Index (ASVI). (4-6-05)*~~

~~***05. Resources**. Proof includes bank books, bank statements or documents verifying the resource value. (4-6-05)*~~

~~***06. Vehicles**. Proof includes NADA values and statements from car dealers. (4-6-05)*~~

~~***07. Loans**. A statement signed by both parties is proof of a loan. A legally binding agreement is not required. The provider of the loan must sign a statement that loan payments received on a regular basis are being made or will be made under a fixed schedule. (4-6-05)*~~

~~***08. Income**. Proof includes wage stubs, statements from employers, income interfaces and award letters. (4-6-05)*~~

~~***09. Shelter Costs**. The household must be informed that benefits will be computed, without a deduction for the shelter costs, if proof is not provided. Proof of shelter costs includes mortgage statements, home equity loans, rent receipts, space rent receipts, lease agreements, tax notices (including irrigation), and insurance premium notices. (4-6-05)*~~

~~***10. Homeless Deduction**. Homeless households will receive a standard homeless shelter deduction. Proof of shelter costs is not required to obtain the homeless shelter deduction. (4-6-05)*~~

~~***11. Heating or Cooling Costs for Standard Utility Allowance (SUA)**. The SUA must include an expense for heating or cooling. The Department will inform the household that benefits will be computed without a deduction for the utility costs if proof is not provided. Proof includes utility bills, statements from utility companies, receipts from the purchase of wood, and landlords. (4-6-05)*~~

~~***12. Limited Utility Allowance (LUA)**. The Department will inform the household that benefits will be computed without a deduction for the utility costs if proof is not provided. Proof of two (2) or more utility costs is required. Proof includes utility bills, statements from utility companies and landlords. Water, sewer, and trash are considered one (1) utility cost regardless of how they are billed. (4-6-05)*~~

~~***13. Minimum Utility Allowance**. The Department will inform the household that benefits will be computed without a deduction for the utility costs if proof is not provided. Proof of one (1) utility cost is required. Proof includes utility bills, statements from utility companies and landlords. Water, sewer, and trash are considered one (1) utility cost regardless of how they are billed. (4-6-05)***~~

~~***14. Dependent Care Costs**. The Department will inform the household that benefits will be computed without a deduction for the dependent care costs if proof is not provided. Proof includes child care bills or statements and ICCP payment information. (4-6-05)***~~

~~***15. Medical Costs**. Proof of incurred medical expenses is required for households claiming a medical deduction. Proof includes medical bills, Medicare reimbursement statements, and prescription receipts. Proof of anticipated medical expenses is not required provided the participant has informed the Department of the expense and the expense is not questionable. Verification of other factors, such as those listed in Subsections 136.15.a. through 136.15.c. of this rule are required if the expense is questionable: (4-6-05)***~~

~~***a.** The allowability of the medical services provided; (6-1-94)***~~

~~***b.** The provider qualifications; (6-1-94)***~~

~~***c.** The individual's eligibility to claim a deduction. (6-1-94)***~~

~~***16. Disability**. Proof of disability includes receipt of permanent or temporary disability benefits, or a statement from a physician or a licensed or certified psychologist. (4-6-05)***~~

~~***17. Child Support Deduction**. The Department will inform the household that benefits will be computed without a deduction for the Child Support costs if proof is not provided. The parent must be legally obligated to make the child support payments. Both the legal obligation to pay child support and the actual amount paid must be verified. Proof of the legal obligation includes: a court order, divorce decree, administrative order, or legally enforceable separation agreement. Proof of child support paid includes: CSS records, cancelled checks, wage withholding statements, UI withholding statements, or statements from the custodial parent. Proof of legally obligated health insurance coverage on behalf of a child is required. Proof includes: insurance policy, insurance company statement, or employer statement. If the household fails or refuses to submit required proof, the household's eligibility and food stamp allotment must be determined without the child support expense. If there is a discrepancy between information provided by the household and CSS, the household must be given an opportunity to resolve the discrepancy. Proof of child support payment is required at each certification. Proof of changes in the amount of legally obligated child support ordered or the amount of child support paid must be obtained at recertification. (4-6-05)***~~

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

**147. CASE ACTION AFTER DELAY CAUSED BY HOUSEHOLD.**
The Department will send notice and deny an application if the household caused the delay by filing an incomplete application, failing to attend an interview, or not providing required verification. If the household takes required action within sixty (60) days after the application date, the Department will reopen the case without a new application. (10-1-05)T

**01. First Thirty Day Period**. If the household caused the delay during the first thirty (30) day period and provides proof by the thirtieth day, reopen the case and prorate benefits from the date of application. (10-1-05)T

**02. Second Thirty Day Period**. If the household caused the delay during the first thirty (30) day period and is eligible during the second thirty (30) day period, the Department will approve Food Stamps for the month after the application month. Food Stamps for the month after the application month must be prorated from the date the household provides requested proof. The Department will not issue ~~*benefits*~~ food stamps for the application month. ~~*(6-1-94)*~~(10-1-05)T

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

**202. RESIDENCY.**
A household must live in ~~*the project area where*~~ Idaho when it applies for Food Stamps. A person can get Food Stamps as a member of only one (1) household a month. An exception is made for a person moving to a shelter for battered women and children. ~~*(6-1-94)*~~(10-1-05)T

**01. Place of Residency**. Households must live in the project area in which they make application. An eligible Food Stamp household is not required to live in a permanent dwelling or have a fixed mailing address. There is no residence duration requirement. (6-1-94)

**02. Vacationing Persons Not Residents**. Persons in Idaho for vacation only are not residents for Food Stamp eligibility. Vacation is the period a household spends away from their usual activity, work, or home. Vacation is taken for travel, rest, or recreation. (6-1-94)

**03. Physical and Mailing Address Different**. The physical address and the mailing address of a Food Stamp household can be different. If the mailing address is not the household's physical address, the household must provide proof of the physical address. (6-1-94)

**04. Proof of Residence**. Residence can be proven with a driver's license, lease agreement, rent receipt, tax bill, telephone directory or city directory. Residence can be proven by contact with the landlord, neighbor, or by a home visit. Proof is not required for unusual cases, such as homeless households, migrant farm workers, or households new to the project area. A household is new to the project area if it arrives in the same calendar month as the date of application. (6-1-94)

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

**219. CIRCUMSTANCES UNDER WHICH FOOD STAMP PARTICIPATION IS PROHIBITED.**
An individual is prohibited from receiving Food Stamp benefits in the same month as he: (4-6-05)

**a.** Receives tribal commodities; (4-6-05)

**b.** Is incarcerated; (4-6-05)

**c.** Is in an institution; (4-6-05)

**d.** Is in foster care and the foster parents are receiving a cash benefit for providing care and maintenance for the child; or ~~(4-6-05)~~(10-1-05)T

**e.** Receives Food Stamp benefits in another household. (4-6-05)

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

**222. DETERMINATION OF HOUSEHOLD COMPOSITION FOR SIMPLIFIED REPORTING HOUSEHOLDS.**
Household composition must be determined at application, ~~*and*~~ recertification, and when a reported change would result in an increase in the food stamp benefits. ~~(4-6-05)~~(10-1-05)T

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

**227. EXEMPTIONS FROM JSAP.**
Exemptions from JSAP are listed in Subsections 227.01 through 227.12 of these rules. (5-3-03)

**01. Parents or Caretakers of a Child Under Six Years of Age**. A parent or caretaker responsible for the care of a dependent child under age six (6) is exempt from JSAP. If the child becomes six (6) during the certification period, the parent or caretaker must register for JSAP at the next scheduled recertification, unless exempt for another reason. (5-3-03)

**02. Parents and Caretakers of an Incapacitated Person**. A parent or caretaker responsible for the care of a person incapacitated due to illness or disability is exempt from JSAP. (5-3-03)

**03. Persons Who are Incapacitated**. A person who is physically or mentally unfit for employment is exempt from JSAP. If a disability is claimed which is not evident, proof to support the disability can be required. Acceptable proof includes receipt of permanent or temporary disability benefits, or a statement from a physician or licensed or certified psychologist. (5-3-03)

**04. Students Enrolled Half Time**. A ~~*person*~~ student who is eighteen (18) years or older is exempt from JSAP if: ~~*(5-3-03)*~~(10-1-05)T

**a.** He is enrolled at least half-time in any institution of higher learning and if he meets the definition of an eligible student in Section 282 of these rules; or (5-3-03)

**b.** He is enrolled at least half-time in any other recognized school or training program. (5-3-03)

**c.** He remains enrolled during normal periods of class attendance, vacation, and recess. If he graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), he must register for work ~~*unless exempt for another reason*~~ at the next scheduled recertification. ~~*(5-3-03)*~~(10-1-05)T

**05. SSI Applicants**. A person who is applying for SSI is exempt from JSAP until SSI eligibility is determined. (5-3-03)

**06. Persons Who are Employed**. A person who is employed is exempt from JSAP if: (5-3-03)

**a.** He is working at least thirty (30) hours per week; or (5-3-03)

**b.** He is receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours; or (5-3-03)

**c.** He is a migrant or seasonal farm worker under contract or agreement to begin employment within thirty (30) days. (5-3-03)

**07. Persons Who are Self-Employed**. A person who is self-employed is exempt from JSAP if he is working a minimum of thirty (30) hours per week or is receiving earnings equal to or greater than the Federal minimum wage multiplied by thirty (30) hours. (5-3-03)

**08. Addicts or Alcoholics**. A regular participant in a drug or alcohol treatment and rehabilitation program is exempt from JSAP. (6-1-94)

**09. Unemployment Insurance (UI) Applicant/Recipient**. A person receiving UI is exempt from JSAP. A person applying for, but not receiving UI, is exempt from JSAP if he is required to register for work with the Department of Commerce and Labor as part of the UI application process. (5-3-03)

**10. Children Under Age Sixteen**. A child under age sixteen (16) is exempt from JSAP. A child who turns sixteen (16) within a certification period must register for JSAP at recertification, unless exempt for another reason. (5-3-03)

**11. Persons Age Sixteen or Seventeen**. A household member age sixteen (16) or seventeen (17) is exempt from JSAP if he is attending school at least half-time, or is enrolled in an employment and training program, including GED, at least half-time. (5-3-03)

**12. Participants Age Sixty or Older**. A participant age sixty (60) or older is exempt from JSAP. (5-3-03)

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

**249. ENDING SANCTIONS FOR FAILURE TO COMPLY WITH UI REQUIREMENTS.**
Households or household members sanctioned for not complying with UI requirements are ineligible until one (1) of the conditions listed in Subsections 249.01 through 249.05 is met. (7-1-99)

**01. Fair Hearing Reversal**. Sanction ends if a fair hearing reverses the sanction. (6-1-94)

**02. Sanctioned Member Becomes Exempt**. Sanction ends if the sanctioned member becomes exempt from JSAP. (7-1-99)

**03. Sanctioned Member Leaves Household**. Sanction ends if the sanctioned member leaves the Household. (6-1-94)

**04. Six Months Elapse for Sanctioned Household Member**. The household~~'s~~ member's sanction ends ~~if~~ six (6) months ~~elapse~~ after it is imposed. ~~(7-1-98)~~(10-1-05)T

**05. Member Complies With UI**. Sanction ends if the member, who refused to comply with a UI requirement, complies. The member must complete or resume the assignment and serves the minimum sanction period. This must be proved by UI staff. (7-1-99)

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

**302. CATEGORICALLY ELIGIBLE HOUSEHOLD.**
A ~~H~~household ~~are~~ is exempt from the resource limit if all household members receive or are authorized to receive monthly cash payments through TAFI, AABD, or SSI. ~~(7-1-98)~~(10-1-05)T

**303. COUNTING RESOURCES FOR APPLICANTS.**
At the time of application, a household must report all countable resources it has or expects to ~~get~~ receive. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. ~~*Applicant households with a resource change, after the interview date, must report the change within ten (10) days after the approval notice. After the household gets notice of Food Stamp approval, it must report any change in resources within ten (10) days.*~~ ~~(6-1-94)~~(10-1-05)T

304. Counting Resources For Recipients.
Determine resources for recipients throughout the certification period as described in Section 601 of these rules. ~~*(6-1-94)*~~(10-1-05)T

**01. Anticipated Resources**. If resources are anticipated at any time during an upcoming month or months, a resource determination must be made. Anticipated resources affect the entire month's eligibility for the month of receipt. (6-1-94)

**02. Unanticipated Newly Acquired Resources**. Consider unanticipated newly acquired resources available as of the first day of the month following the receipt of the new resource. If the client spends or uses up the resource before the first day of the next month, the resource will not be counted the next month. (6-1-94)

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

**321. RESOURCES OF DISQUALIFIED HOUSEHOLD MEMBERS.**
The household must report the resources of members disqualified for Food Stamps. The household must verify any questionable information. The resources of the disqualified person are included in determining the resource limit. Disqualified household members with resources counted toward the household limit are listed below: (6-1-94)

**01. Member Disqualified for IPV**. Resources of a household member disqualified for an intentional program violation are counted. (6-1-94)

**02. Member Disqualified for Failure to Comply With Work Requirements**. Resources of a household member disqualified for failing to comply with a work requirement are counted. ~~*(6-1-94)*~~(10-1-05)T

**03. Member Ineligible Due to SSN**. Resources of a household member ineligible for refusing to get an SSN are counted. (6-1-94)

**04. Ineligible Legal Non-Citizen**. Resources of an ineligible legal non-citizen household member are counted. (7-1-98)

**05. Member Disqualified for Failure to Meet the ABAWD Work Requirement**. Resources of a household member disqualified for failure to meet the ABAWD work requirement are counted. (7-1-98)

**06. Member Disqualified for a Voluntary Quit or Reduction in Hours of Work**. Resources of a member disqualified for a voluntary quit or reduction of work are counted. (4-5-00)

**07. Member Disqualified as a Fugitive Felon or Probation or Parole Violator**. Resources of a member disqualified as a fugitive felon or probation or parole violator are counted. (7-1-98)

**08. Member Disqualified for Failure to Cooperate in Establishing Paternity and Obtaining Support**. Resources of a member disqualified for failure to cooperate in establishing paternity and obtaining support are counted. (7-1-98)

**09. Member Disqualified for Conviction of a Controlled Substance Felony**. Resources of individuals convicted under federal or state law of any offense classified as a felony involving the possession, distribution, or use of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole are counted. The felony must have occurred after August 22, 1996. (3-30-01)

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

**323. LUMP SUM RESOURCES.**
Nonrecurring lump sum payments are counted as a resource in the month received, unless excluded under these rules. The household must report the lump sum payment to the Department within ten (10) days of ~~*getting*~~ receiving the payment. If the lump sum along with other resources exceeds the resource limit, the household is not eligible for Food Stamps. If resources exceed the limit, the Department will end Food Stamps after timely notice. The household may spend resources down under the limit in the month the lump ~~*some*~~ sum was received. If the resource is spent below the limit, the household continues to be eligible for Food Stamps. The household must still report receipt of the lump sum payment within ten (10) days. Some lump sum payments are listed below: ~~*(6-1-94)*~~(10-1-05)T

**01. Retroactive Payments**. Retroactive payments from: (6-1-94)

**a.** Social Security. (6-1-94)

**b.** SSI. (6-1-94)

**c.** Public Assistance. (6-1-94)

**d.** Railroad Retirement Benefits. (6-1-94)

**e.** Unemployment Compensation Benefits. (6-1-94)

**02. Insurance**. Insurance settlements. (6-1-94)

**03. Refunds**. Income tax refunds, rebates, or credits. (6-1-94)

**04. Earned Income Tax Credit (EITC)**. Single earned income tax credit payments received at the end of the tax year. (6-1-94)

~~***05. Child Support****. Child support pass-through payments to cover previous months.*~~
~~*(6-1-94)*~~

**0~~6~~5. Property Payments**. Lump sum payment from sale of property. Contract payments from the sale of property are counted as income. (6-1-94)

**0~~7~~6. Security Deposits**. Refunds of security deposits on rental property or utilities. (6-1-94)

**0~~8~~7. Disability Pension**. Annual adjustment payments in VA disability pensions. (6-1-94)

**0~~9~~8. Vacation Pay**. Vacation pay, withdrawn in one lump sum by a terminated employee. (6-1-94)

**~~1~~09. Military Bonus**. Military re-enlistment bonuses. (6-1-94)

**1~~1~~0. Readjustment Pay**. Job Corps readjustment pay. (6-1-94)

**1~~2~~1. Severance Pay**. Severance pay, paid in one (1) lump sum to a former employee. (6-1-94)

**1~~3~~2. TAFI One-Time Cash Payment**. The one-time TAFI cash diversion payment. (4-5-00)

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

**363. HUD FAMILY SELF-SUFFICIENCY (FSS) ESCROW ACCOUNT.**
Escrow accounts and the interest earned on an escrow account established by HUD for families participating in the Family Self-Sufficiency (FSS) Program established by Section 544 of the National Affordable Housing Act, are excluded as a resource when determining eligibility for food stamps. The federal exclusion for the funds in this program and other similar type escrow funds are only excluded while the funds are still in the escrow account or being used for a HUD approved purpose. Participants in the FSS program may withdraw funds from the escrow account before completing the program, with permission from the public housing authority, but only for purposes related to the goal of the Family Self-Sufficiency contract, such as completion of higher education, job training, or to meet start-up expenses involved in creation of a small business. (10-1-05)T

**36~~3~~4. -- 372. (RESERVED).**

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

**389. REPORTING RESOURCES.**

Recipient households must report resource changes at each recertification. Change reporting households must also report changes within ten (10) days after ~~*getting*~~ receiving a new resource. A household must report when cash on hand, stocks, bonds, or money in a financial institution reaches or exceeds the resource limit. A household must report if it ~~*gets*~~ obtains a vehicle.
~~*(6-1-94)*~~(10-1-05)T

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

**405. EXCLUDED INCOME.**
Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

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

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

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

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

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

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

**07. Income in Kind**. Any gain or benefit, such as meals, garden produce, clothing, or

shelter, not paid in money, is excluded as income. (6-1-94)

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

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

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

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

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

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

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

**a.** Travel, per diem, and uniforms for job or training. (6-1-94)

**b.** Out-of-pocket expenses of volunteer workers. (6-1-94)

**c.** Medical and dependent care expenses. (6-1-94)

**d.** Pay for services provided by Title XX of the Social Security Act. (6-1-94)

**e.** Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)

**f.** Work-related and dependent care expenses paid by the JSAP program. (6-1-94)

**g.** Transitional child care payments. (6-1-94)

**h.** Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)

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

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

**15. HUD Family Self-Sufficiency (FSS) Escrow Account**. The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD approved purpose. See Section 363 of these rules for further clarification. (10-1-05)T

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

**502. EARNED INCOME WHEN A HOUSEHOLD MEMBER TURNS AGE EIGHTEEN.**
When a child attending elementary or secondary school turns age eighteen (18), do not count earned income received or expected by that person ~~*the month after he turns eighteen (18)*~~ until the next recertification. ~~*(7-1-98)*~~(10-1-05)T

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

**503. -- 507. (RESERVED).**

**508. PROJECTING MONTHLY INCOME.**
Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below: (6-1-94)

**01. Income Already Received**. Count income already received by the household during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. (6-1-94)

**02. Anticipated Income**. Count income the household and the Department believe the household will get during the remainder of the certification period. If the exact income amount is uncertain or unknown, that portion must not be counted. If the date of receipt of income cannot be anticipated for the month of the eligibility determination, that portion must not be counted. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the

Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. (6-1-94)

**03. Full Month's Income Not Expected**. (10-1-94)

**a.** Ongoing income is income from an ongoing source. Ongoing income has been received in the past and is expected to be received in the future. If a full month's income is not expected from an ongoing source, count the amount of income expected for the month: (10-1-94)

i. If the actual amount of income is known, use the actual income. (10-1-94)

ii If the actual amount of income is unknown, project the expected income. (10-1-94)

iii. Convert the income to a monthly amount. (10-1-94)

**b.** If income is from a new source and a full month's income is not expected, count the actual amount of income expected for the month. Do not convert the new source of income to a monthly amount. (10-1-94)

**c.** If income is from a terminated source and no additional income is expected in a future month from this source, count the actual income received during the month. Do not convert the terminated source of income. (10-1-94)

**d.** If a full month's income is not expected from a new ~~*or terminated*~~ source of income, count the amount of income expected for the month: ~~*(10-1-94)*~~(10-1-05)T

i. If the actual amount of income is known, use the actual known income. (10-1-94)

ii. If the actual amount of income is unknown, project the income. (10-1-94)

iii. Do not convert the income to a monthly amount if a full month's income from a new ~~*or terminated*~~ source is not expected. ~~*(10-1-94)*~~(10-1-05)T

**04. Income Paid on Salary**. Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. (6-1-94)

**05. Income Paid At Hourly Rate**. Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. (6-1-94)

**06. Fluctuating Income**. When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. (6-1-94)

**07. Converting Income to a Monthly Amount**. If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one

of the formulas below: (6-1-94)

**a.** Multiply weekly amounts by four point three (4.3). (6-1-94)

**b.** Multiplying bi-weekly amounts by two point one five (2.15). (6-1-94)

**c.** Multiplying semi-monthly amounts by two (2). (6-1-94)

**d.** Use the exact monthly income if it is expected for each month of the certification period. (6-1-94)

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

**532. GROSS INCOME LIMIT.**
Households exceeding the gross income limit for the household size are not eligible, unless they are categorically eligible or have an elderly or disabled member. ~~*Categorically eligible households are exempt from gross and net income limits.*~~ A household with an elderly or disabled household member~~s~~ is exempt from the gross income limit. If ~~*A*~~all household members ~~*of categorically eligible households must be approved for*~~ receive or are authorized to receive monthly payments through TAFI, AABD, or SSI, the household is categorically eligible. ~~*Households with elderly or disabled household members are exempt from the gross income limit.*~~ The gross income limit is raised each federal fiscal year by FNS, based on the federal cost of living (COLA) adjustment. Gross income limits are listed under http://www.fns.usda.gov/fsp/government/cola.htm. ~~*(4-6-05)*~~(10-1-05)T

**533. HOUSEHOLD ELIGIBILITY AND BENEFIT LEVEL.**
A household's eligibility and benefit level ~~*will be*~~ is calculated in accordance with 7 CFR 273.10, except as indicated below in Subsections 533.01 through 533.07. of this rule. The deductions in Subsections 533.01 through 533.07 of these rules are subtracted from non-excluded income. ~~*(4-6-05)*~~(10-1-05)T

**01. Standard Deductions**. The standard deductions are controlled by Federal law. The monthly amounts are specified in Title 7 United States Code Section 2014. Current deductions may be found under http://www.fns.usda.gov/fsp/government/cola.htm. (4-6-05)

**02. Earned Income Deduction**. The earned income deduction is twenty percent (20%) of gross earned income. (6-1-94)

**03. Homeless Shelter Deduction**. The homeless shelter deduction is established by FNS and may be found under http://www.fns.usda.gov/fsp/government/cola.htm. (4-6-05)

**04. Excess Medical ~~*Expense*~~ Deduction**. Excess medical expense is nonreimbursed medical expense of more than thirty-five dollars ($35) per household per month. The household member must be either age sixty (60) or older or disabled to get this expense deduction. Special diets are not deductible. For allowable medical expenses, see Section 535 of these rules.

~~*(4-6-05)*~~(10-1-05)T

**05. Dependent Care ~~*Expense*~~ Deduction**. The dependent care expense deduction is for monthly dependent care expenses up to a maximum of two hundred dollars ($200) per dependent child under age two (2) and one hundred seventy-five dollars ($175) for any other dependent. The care must be needed for a household member to accept, continue, or seek employment, or attend school or training for employment. ~~*(4-6-05)*~~(10-1-05)T

**06. Child Support ~~*Expense*~~ Deduction**. The child support expense deduction is the legally obligated child support and arrearage the household pays, or expects to pay, ~~*on behalf of*~~ to or for a non-household member. ~~*(4-6-05)*~~(10-1-05)T

**07. Excess Shelter ~~*Expense*~~ Deduction**. Excess shelter expense is the monthly shelter cost over fifty percent (50%) of the household's income after all other deductions. The excess shelter expense is not deducted if the household has received the homeless shelter deduction. For allowable shelter expenses, see Section 542 of these rules. ~~*(4-6-05)*~~(10-1-05)T

**534. AVERAGING INFREQUENT, FLUCTUATING, OR ONE-TIME ONLY EXPENSES.**
Infrequent, fluctuating, or one-time only expenses for medical, child support, shelter or child care ~~*that can be anticipated for the month after approval of the application for Food Stamp benefits, recertification, or the twelve (12) month contact*~~ are averaged. ~~*(4-6-05)*~~(10-1-05)T

**01. Averaging Infrequent Expenses**. Households can have infrequent expenses averaged forward over the interval between scheduled billings, if there are scheduled billings. If there are no scheduled billings, expenses are averaged over the intended coverage period. (4-6-05)

**02. Averaging Fluctuating Expenses**. Households can have fluctuating expenses averaged over the certification period in which they are billed. (6-1-94)

**03. Averaging One-Time Only Expenses**. One-time only expenses can be averaged over the certification period in which they are billed. (4-6-05)

**04. Predicting Future Expenses**. Predicted expenses must be based on the most recent month's bills, unless changes are expected to occur. (6-1-94)

**05. Converting Expenses To Monthly Figures**. Whenever an expense is billed on other than a monthly basis, the expense is converted to a monthly amount. The method used to compute monthly expenses must be documented. (4-6-05)

**06. Averaging One-Time Medical Expenses For Households Certified For Twenty-Four Months**. Households with one-time medical expenses that are certified for twenty-four (24) months have the option of: (4-6-05)

**a.** Deducting the expense for one (1) month. (3-15-02)

**b.** Averaging the expense over the first twelve (12) months of the certification period.

(4-6-05)

**c.** Averaging the expense over the twenty-four (24) month certification period. (4-6-05)

**535. MEDICAL EXPENSES.**
~~*Medical expenses over thirty-five dollars ($35), for elderly or disabled household members, must be deducted from the household income.*~~ Allowable medical expense deductions are listed ~~*below*~~ in Subsection 535.01 through 535.14 of these rules. ~~*If an agreement, either oral or written, is made between the medical provider and the client to pay a bill in monthly amounts, the monthly agreement amount specified is considered the medical expense. The agreement must be made before the initial bill becomes due. The agreement must indicate a specific amount due each month. If there is no agreement, amounts from past billing periods are not deductible. The amounts are not deductible, even if the past debt is in the current bill and actually paid by the household.*~~ The household must provide proof of the incurred or anticipated cost before a deduction is allowed. ~~*(4-6-05)*~~(10-1-05)T

**01. Medical and Dental Services**. Services must be performed by licensed practitioners, physicians, dentists, podiatrists, or other qualified health professionals. Other qualified health professionals include registered nurses, nurse practitioners, licensed physical therapists and licensed chiropractors. (6-1-94)

**02. Psychotherapy and Rehabilitation Services**. Services must be performed by licensed psychiatrists, licensed clinical psychologists, licensed practitioners, physicians or other qualified health professionals. (6-1-94)

**03. Hospital or Outpatient Treatment**. Hospital or outpatient treatment includes expenses for hospital, nursing care, State licensed nursing home care, and care to a person immediately before entering a hospital or nursing home. (4-6-05)

**04. Prescription Drugs**. Prescription drugs and prescribed over-the-counter medication including insulin. (6-1-94)

**05. Medical Supplies and Sickroom Equipment**. Medical supplies and sickroom equipment including rental or other equipment. (6-1-94)

**06. Health Insurance**. Health and hospitalization insurance premiums. These do not include health and accident policies payable in a lump sum for death or dismemberment. These do not include income maintenance policies to make mortgage or loan payments while a beneficiary is disabled. (6-1-94)

**07. Medicare Premiums**. Medicare premiums related to coverage under Title XVIII of the Social Security Act. (6-1-94)

**08. Cost-Sharing or Spend-Down Expenses**. Cost-sharing or spend-down expenses incurred by Medicaid recipients. (6-1-94)

**09. Artificial Devices**. Dentures, hearing aids, and prostheses. (6-1-94)

**10. Guide Dog**. Expenses incurred buying and caring for any animal trained and routinely used to help a disabled person. Expenses include costs for dog food, training, and veterinarian services. (4-6-05)

**11. Eyeglasses**. Expenses for eye examinations and prescribed eyeglasses. (4-6-05)

**12. Transportation and Lodging**. Reasonable transportation and lodging expenses incurred to get medical services. (4-6-05)

**13. Attendant Care**. Attendant care costs necessary due to age, disability, or illness. If attendant care costs qualify for both the excess medical and dependent care expense deductions, the cost is treated as a medical expense. (4-6-05)

**14. Attendant Meals**. One hundred nineteen dollars ($119) per month are deducted if the household provides most of the attendant's meals. (4-6-05)

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

**542. COSTS ALLOWED FOR SHELTER DEDUCTION.**
Shelter costs are current charges for the shelter occupied by the household. Shelter costs include costs for the home temporarily not occupied because of employment or training away from home or illness. The costs allowed for the shelter deduction are listed below: (6-1-94)

**01. House Payments**. Mortgages, second mortgages, mortgage fees, home equity loans, and land payments. (4-6-05)

**02. Rent**. Rent and space rent. (6-1-94)

**03. Homeless Shelter Deduction**. The homeless shelter deduction is allowed for homeless households with some shelter expenses. It is established by FNS and may be found under http://www.fns.usda.gov/fsp/government/cola.htm. This deduction must not be used in combination with other costs allowed for shelter deduction. ~~*(4-6-05)*~~(10-1-05)T

**04. Condominium Fees**. The entire condominium fee, including fees for maintenance of the structure and the grounds. (3-30-01)

**05. Loan Payments**. Loan repayments for the purchase of a mobile or motor home, including interest. (6-1-94)

**06. Taxes And Insurance**. Property taxes, state and local assessments, and insurance on the structure. This also includes insurance on a vehicle used as a residence. (4-6-05)

**07. Utilities**. Only one (1) utility allowance (SUA, LUA, or MUA) may be used for a household. The costs used to determine the utility allowance are: heating, cooling, cooking fuel,

electricity, the basic service fee for one (1) telephone (including wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and basic service for a cellular phone), water, sewer, garbage and trash collection, well installation and maintenance, septic tank system installation and maintenance, and fees for initial utility installation. One-time deposits cannot be included. (4-6-05)

**08. Vehicle Payments**. Payments for vehicles used as the primary residence for the household. (6-1-94)

**09. Costs for Home Repairs**. Nonreimbursable costs to repair a home damaged or destroyed by a natural disaster such as a fire or flood or earthquake. (6-1-94)

**10. Home Temporarily Not Occupied**. Shelter costs for the home temporarily not occupied because of employment, training away from home, illness, or abandonment caused by a natural disaster or casualty loss. This shelter cost may be in addition to the shelter cost for the home the household currently occupies. To receive the shelter deduction for a vacated home: (4-6-05)

**a.** The household must intend to return; (4-6-05)

**b.** Current occupants must not be claiming Food Stamp shelter costs; and (4-6-05)

**c.** The home must not be leased or rented. (6-1-94)

**543. UTILITY ALLOWANCES.**
The shelter deduction is computed using one (1) of three (3) utility allowances: Standard Utility Allowance (SUA). Limited Utility Allowance (LUA), or the Minimum Utility Allowance (MUA). Utility allowances are not prorated. (4-6-05)

**01. Standard Utility Allowance (SUA)**. (4-6-05)

**a.** Primary heating or cooling system. The household must have a primary heating or cooling cost to qualify for the SUA. The heating or cooling costs must be separate from rent or mortgage payments. This includes households in private rental housing, billed by their landlords for individual usage or charged a flat rate, separately from rent. If not billed regularly for heating or cooling costs, the household must be otherwise Food Stamp eligible between billing periods. (4-6-05)

**b.** Cooling costs. If the household claims cooling costs, the household must have either an air conditioning system or a room air conditioner to qualify for the SUA. (3-15-02)

**c.** Heating costs. If the household claims heating costs, the household must have expenses for heat. Households buying wood for their primary source of heat may get the SUA. Cutting their own wood for the primary source of heat does not qualify a household for the SUA. Supplemental heat sources such as space heaters, electric blankets, cook stoves and a secondary heat source such as a fireplace do not qualify households for the SUA. (4-6-05)

**d.** LIHEAP. If the household receives LIHEAP assistance, it is automatically eligible

for the SUA. (10-1-05)T

~~*d*~~**e.** Energy Assistance Excluded From Income. If the household gets direct or indirect energy assistance that is excluded from income, the household gets the SUA if the amount of the expense exceeds the amount of the assistance. (3-15-02)

~~*e*~~**f.** Energy Assistance Not Excluded From Income. If a household gets energy assistance that is not excluded from income, the household must also have out-of-pocket heating or cooling costs to get the SUA. (3-15-02)

~~*f*~~**g.** Occupied and Unoccupied Home. A household with both an occupied home and an unoccupied home, is limited to one (1) SUA. (3-15-02)

**02. Limited Utility Allowance (LUA)**. The household must be billed for more than one (1) utility that is not for heating or cooling. Water, sewer, and trash are considered one (1) utility cost regardless of how they are billed. If the household is billed for rural trash pickup, this can be counted as a separate utility. (4-6-05)

**03. Minimum Utility Allowance (MUA)**. The household must be billed for one (1) utility that is not for heating or cooling. (4-6-05)

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

**549. NET INCOME LIMIT TEST.**
Categorically eligible households do not have ~~*a*~~ to meet the net income limit. ~~*For a*~~All other households, including those with an elderly or disabled household member, ~~*if the net income of the household*~~ must not exceed~~*s*~~ the net income limit~~*, the household is not*~~ to be eligible for Food Stamps~~*, unless categorically eligible*~~. Net income limits are established each federal fiscal year by FNS and listed under http://www.fns.usda.gov/fsp/government/cola.htm. ~~*(4-6-05)*~~(10-1-05)T

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

**566. -- 57~~*3*~~1. (RESERVED).**

**572. HOUSEHOLD COMPOSITION CHANGES FOR CHANGE REPORTING HOUSEHOLDS.**
Changes in household composition are required to be reported for change reporting households. Changes must be reported within ten (10) days of the date the change occurs. The change is effective for the month after it is reported, allowing for timely notice. (10-1-05)T

**573. HOUSEHOLD COMPOSITION CHANGES FOR SIMPLIFIED REPORTING HOUSEHOLDS.**

Changes in household composition are not required to be reported for simplified reporting households. If a simplified reporting household does report a change in household composition, and the change would increase the Food Stamp benefit, proof is needed to act on the change. If proof is provided within ten (10) days, increase the Food Stamp benefits beginning the month immediately following when the change was reported. If proof is not provided within ten (10) days, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next recertification. (10-1-05)T

**574. ~~*BENEFITS FOR*~~ ADDING PREVIOUSLY DISQUALIFIED HOUSEHOLD MEMBERS.**
The resources, income, and deductions of a previously ~~*ineligible*~~ disqualified household member must be determined. ~~*Add a*~~ Change the previously disqualified household member's participation the month following the last month in the sanction or if the person becomes exempt. The disqualification must have been due to an intentional program violation (IPV), work registration or Job Search Assistance Program (JSAP) sanction, voluntary quit or reduction of work hours, failure to comply with the SSN requirement, or ineligible legal non-citizen status. The person's resources, income, and deductions that were previously prorated are counted in full the month ~~*the person is added to the household*~~ after the disqualification ends. Prorate benefits from the date the ABAWD becomes Food Stamp eligible by reaching eighty (80) hours by working, participating in a work program, or combining work and work programs. ~~*(3-15-02)*~~(10-1-05)T

**575. ~~*ADDING PREVIOUSLY INELIGIBLE*~~ HOUSEHOLD COMPOSITION CHANGES FOR STUDENT.**
~~*If the household member has been ineligible due to student status, add the eligible person the month following the month the household reports the change.*~~ Ineligible students are defined as non-household members. When a student's status changes, the change is treated as a new person entering or leaving the Food Stamp household. ~~*(6-1-94)*~~(10-1-05)T

**01. Student Residing in a Change Reporting Household**. Changes in household composition are required to be reported for change reporting households. Changes must be reported within ten (10) days of the date the change occurs. The change is effective the month after it is reported, allowing for timely notice. (10-1-05)T

**02. Student Residing in a Simplified Reporting Household**. Changes in household composition are not required to be reported for simplified reporting households. If a simplified reporting household does report a change in household composition, and the change would increase the Food Stamp benefit, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next recertification. (10-1-05)T

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

**601. REPORTING REQUIREMENTS AND RESPONSIBILITIES.**
The household must report and verify changes in circumstances based on the requirements for the

reporting group to which the household is assigned. Changes may be reported by phone, by mail, or directly to the Department. Households must report as follows: (4-6-05)

**01. Change Reporting (CR) ~~*And Extended Certification (EC)*~~ Households**. Change reporting ~~*and extended certification*~~ households must report the following: ~~*(4-6-05)*~~(10-1-05)T

**a.** Unearned income changes of more than fifty dollars ($50); (4-6-05)

**b.** Earned income changes of more than one hundred dollars ($100); (4-6-05)

~~***c.***~~ ~~*Decrease in ABAWD hours to less than eighty (80) hours per month;*~~ ~~*(4-6-05)*~~

~~***d***~~**c.** Address changes~~*and the related changes in shelter costs*~~; ~~*(4-6-05)*~~(10-1-05)T

~~***e***~~**d.** Changes in household composition; and (4-6-05)

~~***f***~~**e.** When resources exceed the resource limit. (4-6-05)

**02. Simplified Reporting (SR) Households**. Simplified reporting households must report the following: (4-6-05)

**a.** When the household's total gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Guideline (FPG) for the household size; (4-6-05)

**b.** Any change of address~~*and the related changes in shelter costs*~~; and ~~*(4-6-05)*~~(10-1-05)T

**c.** A decrease in ABAWD hours to less than eighty (80) hours per month. (4-6-05)

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

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

**01. General Changes On Which Department Must Act**. Regardless of whether the Food Stamp Benefit will increase or decrease, the Department must act as described in Sections 617 and 618 of these rules when: ~~*(4-6-05)*~~(10-1-05)T

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

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

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

**d.** The change would cause ~~*duplicate*~~ prohibited participation, see Section 219 of these rules; ~~*(4-6-05)*~~(10-1-05)T

**e.** Information is received from a source ~~*considered*~~ the Department has defined as verified upon receipt in Section 012 of these rules; ~~*(4-6-05)*~~(10-1-05)T

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

**g.** The Food Stamp benefit will increase and the change is not a change in expenses; ~~*or*~~ ~~*(4-6-05)*~~(10-1-05)T

**h.** There is a change of address ~~*and shelter expenses change as a result*~~.; or ~~*(4-6-05)*~~(10-1-05)T

**i.** All members of the household move out of the state of Idaho. (4-6-05)

**02. Changes Resulting in an Increase in the Food Stamp Benefit**. The Department must also act on changes that have been reported that would increase the household's Food Stamp amount ~~*excluding the changes listed*~~ as described in Section 61~~5~~7 of these rules. ~~*(4-6-05)*~~(10-1-05)T

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

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

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

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

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

**614. (RESERVED).**

**615. CHANGES IN SHELTER, DEPENDENT CARE, CHILD SUPPORT OR MEDICAL EXPENSES.**
Regardless of the reporting group to which it belongs, a household reporting a change in shelter, dependent care, child support or medical expenses will be not required to provide proof of the change until recertification or the twelve (12) month contact. The Department will not adjust the Food Stamp benefit during the certification period regardless of whether the change in expenses

would cause the Food Stamp benefit to increase or decrease. ~~*Only a shelter cost that is a result of the household moving will be acted upon during the certification period, regardless of whether it increases or decreases the Food Stamp benefit.* *(4-6-05)*~~(10-1-05)T

**616. ~~*DECREASES OR CLOSURE OF FOOD STAMPS*~~ (RESERVED).**
~~*If a change on which the department is required to act results in a decrease or closure of Food Stamps, the Department must provide notice. The change must be effective the first month following timely notice, unless the change does not require ten (10) day advance notice. If the household does not respond to the request for proof, or does respond but refuses to provide sufficient information or fails to provide required proof of a change affecting eligibility by the requested date, send a closure notice. The notice must explain the reason for the closure. The notice must advise the household of the need to submit a new application if it wishes to continue participating in the program. If the household fails to provide required proof of a change affecting Food Stamp amount by the requested date, and the change would result in decreased benefits, no deduction is allowed or benefits are decreased. If the household provides the change verification after the date requested, act on the change as if it was an increase. The effective date of the change is the month after the month the change is verified.* *(3-20-04)*~~

**617. INCREASES IN FOOD STAMP BENEFITS.**
If a change other than expenses results in an increase in Food Stamps and the proof cannot be obtained through interfaces or data brokers, the Department must allow the household ten (10) days to provide proof. The increase must be handled as follows~~:~~ regardless of the reporting requirement. If the household fails to provide proof of a change that would increase the benefit level, the Food Stamp benefit remains at the amount already established. ~~*(4-6-05)*~~(10-1-05)T

~~***01. Changes Required to be Reported****. If the household fails to provide proof of a change required to be reported under Section 601 of these rules, the Food Stamp case must be closed. If the Food Stamp household moves and fails to provide proof of a change in shelter costs, but continues to reside in the state of Idaho, no shelter costs will be allowed. This may cause the Food Stamp benefits to be reduced. If the household subsequently provides proof before the first day of the month the case would close, benefits must be continued, adjusted, or ended, as appropriate. The Department must give adequate notice to the household to adjust or end benefits.* *(4-6-05)*~~

~~***02. Changes Not Required to be Reported****. If the household fails to provide proof of a change that would increase the benefit level, the Food Stamp benefit remains at the amount already established. If the household fails to provide proof within ten (10) days of reporting the change, but shows proof later, benefits will be increased the month after the month that proof of the change was provided.* *(4-6-05)*~~

**0~~3~~1. Proof Provided Within Ten Days**. If the household provides proof within ten (10) days of reporting the change, the Department will increase the Food Stamp benefits beginning the month immediately following the month in which the change was reported. For changes reported after the 20th of the month, a supplement is issued for the next month no later than the 10th of the next month. If the change is reported and verified after the final date to adjust Food Stamp benefits for the following month in the Department's automated eligibility system, the change to the Food Stamp benefits must be made by the ~~*second monthly issuance of Food Stamp benefits after the month the change is reported*~~ following month, even if a supplement must be issued.

~~*(4-6-05)*~~(10-1-05)T

**02.** **Proof Not Provided Within Ten Days**. If the household fails to provide proof within ten (10) days of reporting the change, but shows proof later, benefits are increased the month after the proof of the change is provided. (10-1-05)T

**618. DECREASES IN FOOD STAMP BENEFITS.**
If a change that is required to be reported results in a decrease in Food Stamp benefits, and proof is required, the Department must ~~*allow the household*~~ verify and take action within ten (10) days ~~*to provide proof. The decrease must be handled as follows:*~~ of the date the change was reported. ~~*(4-6-05)*~~

~~***01. Changes Required to be Reported.*** *(4-6-05)*~~

~~***a.*** *If the household provides proof within ten (10) days, the Department must act on the change during the month after the change was reported. The Department must give the household timely notice to adjust or end benefits.* *(4-6-05)*~~

~~***b.***~~ If the household fails to provide proof ~~*of a change required to be reported*~~ within ten (10) days, the Food Stamp case must be closed with timely notice. ~~*If the Food Stamp household moves and fails to provide proof of a change in shelter costs, but continues to reside in the state of Idaho, no shelter costs will be allowed. This may cause the Food Stamp benefits to be reduced.*~~ The notice must explain the reason for the action. If the household then provides proof before the first day of the month the case would close, benefits must be continued, adjusted, or ended as appropriate. The Department must give adequate notice to adjust or end benefits. ~~*(4-6-05)*~~(10-1-05)T

**~~*02*~~619. CHANGES NOT REQUIRED TO BE REPORTED.**
If the household reports a change not required to be reported that would result in a decrease in Food Stamp benefits, the Department will not request proof and will not take action until recertification. The household must be notified that no action will be taken on the reported change. ~~*(4-6-05)*~~(10-1-05)T

**~~*619.*~~ 620. (RESERVED).**

**621. TAFI OR AABD HOUSEHOLD REPORTING CHANGES.**
If a change in the AABD or TAFI grant results in a change in the household's Food Stamp benefits, the Department must count the new grant amount, regardless of whether the Food Stamps increase or decrease. If a change requires a reduction or ending of TAFI or AABD and Food Stamp benefits, ~~*and the Department can determine Food Stamp benefits,*~~ the Department will issue a Notice of Decision for both ~~*AABD and Food Stamps or TAFI and Food Stamps*~~ programs. If the household makes a timely request for a fair hearing and continued benefits, Food Stamp benefits continue pending the hearing. The household must reapply if certification expires before the hearing is complete. ~~*If a change in the AABD or TAFI grant results in a change in the household's Food Stamp benefits, the Department must change the Food Stamp benefits, regardless of whether the Food Stamps increase or decrease. The Department must not make the change that caused the TAFI or AABD benefit to change, unless that change is also one requiring the Department to take action.* *(4-6-05)*~~(10-1-05)T

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

**623. FAILURE TO TAKE ~~*PROMPT*~~ REQUIRED ACTION.**
If the Department is unable to make a change in Food Stamp eligibility or issuance and an overissuance results, ~~*a Claim Determination (HW 0560) form must be prepared*~~ collect the overpayment. If the Department fails to act on a change that increases household benefits, restore lost benefits. ~~*(6-1-94)*~~(10-1-05)T

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

**631. ~~*TIMELY*~~ NOTICE.**
Notices must be sent within the time limits listed in these rules. ~~*Advance*~~ Timely notice ~~*is*~~ must be mailed at least ten (10) days before the effective date of the action. ~~*(6-1-94)*~~(10-1-05)T

**632. ~~*TEN DAY ADVANCE*~~ TIMELY NOTICE NOT REQUIRED.**
~~*Ten (10) day advance*~~ Timely notice is not required~~,~~ when the conditions listed below are met. Adequate notice must be given. ~~*(6-1-94)*~~(10-1-05)T

**01. Statement of Household**. The Department gets a clear, written, signed statement from the household. Food Stamps can be ended or reduced from the facts given in the household statement. (6-1-94)

**02. Food Stamps Reduced After Closure Notice**. The household is sent a notice of closure because it did not provide requested proof. The household provides the proof before the first day of the month of closure. If the proof results in reduced Food Stamps, the reduced benefits are issued. ~~*Ten (10) day advance*~~ Timely notice of the reduction is not required.
~~*(6-1-94)*~~(10-1-05)T

**03. Food Stamps Closed or Reduced Because of Intentional Program Violation (IPV) Penalty**. The Department must impose the IPV penalty the first of the month after the month it gives written notice to the client. ~~*Ten (10) day advance*~~ Timely notice is not required.
~~*(7-1-97)*~~(10-1-05)T

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

**01. Waiver by the Household**. A household member or authorized representative provides a written statement requesting closure. The person gives information causing reduction or an end to benefits and states, in writing, they know adverse action will be taken. The person

acknowledges in writing continuation of benefits is waived, if a fair hearing is requested. (4-5-00)

**02.** **Mass Change**. Mass changes include: (6-1-94)

**a.** Changes in the income limit tables. (6-1-94)

**b.** Changes in the issuance tables. (6-1-94)

**c.** Changes in Social Security benefits. (6-1-94)

**d.** Changes in SSI payments. (6-1-94)

**e.** Changes in TAFI or AABD grants. (7-1-98)

**f.** Changes caused by a reduction, suspension, or cancellation of Food Stamps ordered by the Secretary of USDA. (6-1-94)

**g.** When it performs mass changes, the Department notifies Food Stamp households of the mass change by one of the following methods: (6-1-94)

i. Media notices. (6-1-94)

ii. Posters in the Food Stamp offices and issuance locations. (6-1-94)

iii. A general notice mailed to households. (6-1-94)

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

**a.** If the Department has thirty (30) days advance notice of the TAFI or AABD mass change, Food Stamps must be adjusted the same month as the change. (7-1-98)

**b.** If the Department does not have advance notice, Food Stamp benefits must be changed no later than the month after the TAFI or AABD mass change. (7-1-98)

**c.** Ten (10) day advance notice to Food Stamp households is not required. Adequate notice must be sent to Food Stamp households. (6-1-94)

**d.** If a household requests a fair hearing because of an issue other than mass change, continue Food Stamps. (6-1-94)

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

**05.** **Move From ~~*Project Area*~~ Idaho**. Notice of closure is not required when the household moves from ~~*the project area*~~ Idaho. ~~*(6-1-94)*~~(10-1-05)T

**06.** **Completion of Restored Benefits**. Notice is not required when an increased

allotment, due to restored benefits, ends. The household must have been notified in writing when the increase would end. (6-1-94)

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

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

**09. Households ~~*Getting*~~ Receiving Expedited Service**. Notice is not required if all the following conditions are met: ~~*(6-1-94)*~~(10-1-05)T

**a.** The applicant ~~*got*~~ received expedited services. ~~*(6-1-94)*~~(10-1-05)T

**b.** Proof was postponed. (6-1-94)

**c.** A regular certification period was assigned. (6-1-94)

**d.** Written notice, stating future Food Stamps depend on postponed proof, was given at approval. (6-1-94)

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

**a.** The Department revokes the center's certification. (6-1-94)

**b.** FCS disqualifies the center as a retailer. (7-1-98)

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

**646. NOTICE OF DECISION FOR TIMELY RECERTIFICATION.**
A Notice of Decision must be sent to households that reapply for Food Stamps. To ~~*get*~~ receive Food Stamps with no break in issuance, households must apply for recertification before the fifteenth day of the last month of certification. If the household applies before the fifteenth day of the month, ~~*T*~~the Department will notify the household of eligibility or denial by the end of the current certification period. ~~*(4-6-05)*~~(10-1-05)T

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

**675. IPV, IHE AND AE FOOD STAMP CLAIMS.**
An overissuance exists when the amount of Food Stamps issued exceeds the Food Stamps a household is eligible to receive. The Department must establish a claim against the household, to recover the value of Food Stamps overissued or misused. A claim is an action by the Department to recover the value of Food Stamps paid. The types of Food Stamp claims are listed in Subsections 675.01 through 675.03 of these rules. (3-15-02)

**01. Intentional Program Violation (IPV) Claim**. An IPV claim is an overissuance caused by an intentional, knowing, and willful program violation. (3-15-02)

**02. Inadvertent Household Error (IHE) Claims**. An IHE is a household error, without intent to cause an overissuance, which results in a Food Stamp over-issuance. Causes of IHE claims are: (3-15-02)

**a.** Failure to give information. A household, without intent to cause an over-issuance, fails to give correct or complete information. (3-15-02)

**b.** Failure to report change that was required to be reported. A household, without intent to cause an over-issuance, fails to report changes or to report at all. ~~*(3-15-02)*~~(10-1-05)T

**c.** Failure to comply. A household, without intent to cause an over-issuance, fails to comply due to language barrier, educational level, or not understanding written or verbal instructions. (3-15-02)

**d.** Pending hearing. A household gets continued Food Stamps pending a fair hearing decision. The hearing decision, when made, is against the household. (3-15-02)

**e.** Pending IPV. An IHE claim occurs between the time of an IPV referral, and the IPV decision. (3-15-02)

**03. Agency Error Claim (AE)**. An agency error claim results from an overissuance caused by a Department action, or a failure to act. (3-15-02)

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

**729. -- 73~~3~~4. (RESERVED).**

~~***734. TRANSFERS OF CASE RECORDS.***~~
~~*Procedures for transfer of case records from one Field Office to another include time requirements and authorization.* *(6-1-94)*~~

~~***01. Time Requirements for Processing Transfers****. Process transfers as soon as*~~

~~*possible, but not later than thirty (30) days after the household tells the Department it has moved.* *(6-1-94)*~~

~~***02. Authorization for Transfer****. When a household moves from one Field Office area to another, the receiving Field Office must authorize the case record transfer The sending Field Office must start the automated transfer.* *(6-1-94)*~~

**735. FOOD STAMP HOUSEHOLDS THAT MOVE.**
When a Food Stamp household moves within Idaho, the sending and receiving field offices must transfer the case record and change the household's address. When all members of a Food Stamp household move outside of Idaho, close the case effective at the end of the month in which the household moves. Notice is not required. ~~*(4-6-05)*~~(10-1-05)T

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

**781. PERSON DISQUALIFIED DURING CERTIFICATION PERIOD.**
Benefits are reduced or ended within the certification period when a member has been disqualified for failure to meet the requirements in Subsections 781.01 through 781.07 of these rules. When a person is disqualified during a certification period, determine the eligibility of the other members based on information in the case record. Actions the Department must take to reduce or end benefits are listed below: ~~*(6-1-94)*~~(10-1-05)T

**01. SSN Standards Not Met**. ~~*Benefits are reduced or ended within the certification period when a member has been disqualified for failure to meet the SSN requirement.*~~ The Department must send a notice of adverse action ~~*to*~~ if the SSN standards are not met, telling the household ~~*a*~~ which member has been disqualified. The notice must tell the reason for the exclusion and the benefit level. The notice must tell the household the actions needed to end the disqualification. ~~*(6-1-94)*~~(10-1-05)T

**02. IPV Disqualification**. The Department must send the household a Notice of Disqualification ~~*(HW 0541)*~~ if it is disqualified for IPV. The notice must indicate the Food Stamp amount. The notice must tell the household if they need to reapply. The Department does not have to provide a notice of adverse action. The household may request a fair hearing. The household may not have a second fair hearing if the household had a consolidated fair hearing on the Food Stamp amount and the disqualification. ~~*(6-1-94)*~~(10-1-05)T

**03. JSAP Requirements Not Met**. The Department must send a notice of adverse action when a non-head of household fails to comply with JSAP The notice must tell the household a member has been disqualified. The notice must tell the household the disqualification reason and Food Stamp amount. The notice must tell the household actions the household can take to end disqualification. (6-1-94)

**04. Failed to Show Citizenship or Legal Non-Citizen Status**. The Department must send a notice of adverse action to the household for ineligible alien status or failure to attest to citizenship or alien status. The notice must tell the household a member is disqualified. The notice

must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

**05. Voluntary Quit or Reduction of Hours Worked**. The Department must send a notice of adverse action when a non-head of household is sanctioned for a voluntary quit or reduction of hours of work. The notice must tell the household a member has been disqualified. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

**06. ABAWD Work Requirement Not Met**. The Department must send a notice of adverse action to the household when an ABAWD has received three (3) months of Food Stamp benefits in a three (3) year period while not meeting the work requirement. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

**07. Failure to Cooperate in Establishing Paternity and Obtaining Support**. The Department must send a notice of adverse action to the household when a parent of a minor child or individual exercising parental control over a minor child fails to cooperate in establishing paternity and obtaining support. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

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

**850. FOOD STAMP HOUSEHOLD RIGHTS.**
The Food Stamp household has rights protected by Federal and State laws and Department rules. The Department must inform clients of their rights during the application process and eligibility reviews. Food Stamp rights are listed below: ~~*(6-1-94)*~~(10-1-05)T

**01. Application**. The right to get an application on the date requested. (6-1-94)

**02. Application Registered**. The right to have the signed application accepted right away. (6-1-94)

**03. Representative**. The right to have an authorized representative if the applicant cannot get to the Food Stamp office. The authorized representative must have knowledge of the applicant's situation. (6-1-94)

**04. Home Visit or Telephone Interview**. The right to have a home visit or telephone interview. The applicant must be: (6-1-94)

**a.** Age sixty (60) or older; or (6-1-94)

**b.** Disabled and unable to come to the Food Stamp office. (6-1-94)

**c.** The Department may also allow a home visit or telephone interview because of transportation difficulties or other hardships. (6-1-94)

**05. Thirty Day Processing**. The right to have the application processed and Food

Stamps issued within thirty (30) days. (6-1-94)

**06. Expedited Service**. The right to get Food Stamps within seven (7) days if eligible for expedited service. (3-15-02)

**07. Fair and Equal Treatment**. The right to fair and equal treatment, regardless of age, gender, race, color, handicap, religious creed, national origin, political belief. (4-5-00)

**08. Case Record and Food Stamp Rules Available**. The right to look at the client's case file. The right to look at a copy of the Food Stamp program rules. (6-1-94)

**09. Notification**. The right to be told in writing of: (6-1-94)

**a.** The reasons for the Department's action if the application is rejected. (6-1-94)

**b.** The reasons for the Department's action if Food Stamps are reduced or stopped. (6-1-94)

**10. Fair Hearing**. The right to request a fair hearing about the Department's decision. The right to request a fair hearing if the household feels discrimination has taken place in any way. Food Stamp fair hearings must be requested within ninety (90) days from the day notice is mailed. In certain situations, Food Stamps may continue if a fair hearing is requested. (6-1-94)

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

**884. -- 99~~5~~9. (RESERVED).**

***~~996. FAIR HEARING.~~***
*~~If the client does not agree with the actions of the Department, he can request a fair hearing under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 350.~~* *~~(7-1-97)~~*

***~~997. CONFIDENTIALITY OF RECORDS.~~***
*~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".~~* *~~(6-1-94)~~*

***~~998. INCLUSIVE GENDER.~~***
*~~For these rules, words used in the masculine gender include the feminine.~~* *~~(6-1-94)~~*

***~~999. SEVERABILITY.~~***
*~~The rules of Title 03, Chapter 04, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of the remaining portions of this Chapter.~~* *~~(6-1-94)~~*

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

### DOCKET NO. 16-0305-0501

### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The pending rule is being adopted as proposed. The original text of the temporary rule was published in the March 2, 2005, Idaho Administrative Bulletin, Vol. 05-3, pages 20 and 21. The original text of the proposed rule was published in the July 6, 2005, Idaho Administrative Bulletin, Vol. 05-7, pages 14 through 16. No changes have made to either the temporary or proposed rules.**

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

This rulemaking has no fiscal impact on the state general fund. One hundred percent (100%) of the funds that will be used are federal funds provided by the Medicaid Infrastructure Grant.

Projected operational costs based on current forecasting:

First Year Costs: $8,923

Fifth Year Costs: $0 (NOTE: All costs for this rule change are “up front” in the first year.)

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Peggy Cook at (208) 334-5815.

DATED this 18th day of August, 2005.

***The Following Notice Was Published With The Temporary Rule***

***DEPARTMENT OF HEALTH AND WELFARE*** ***Docket No. 16-0305-0501***
***Eligibility for Aid to the Aged, Blind and Disabled (AABD)*** ***PENDING RULE***

**EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2005.**

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

**This rule change will provide more opportunity for people with disabilities who want to work to be able to do so without losing their Medicaid benefits. People with disabilities who have jobs are more self-sufficient in the long-term and may rely less on government services. This rule change is a Federal work incentive authorized under Section 1905(q) of the Social Security Act.**

**This temporary rule adds language that will allow continued Medicaid coverage to individuals with disabilities who received Medicaid and AABD state cash assistance before they began employment or increased their level of earnings. The rule change will allow these individuals to continue to receive Medicaid after they have received an increase in earnings that would cause them to lose Medicaid benefits under the current rules.**

**TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it confers a benefit to certain Medicaid recipients.**

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule, contact Linda Palmer at (208) 334-5815.

DATED this 1st day of February, 2005.

### *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, July 20, 2005.

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.

***DEPARTMENT OF HEALTH AND WELFARE*** ***Docket No. 16-0305-0501***
***Eligibility for Aid to the Aged, Blind and Disabled (AABD)*** ***PENDING RULE***

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

This rule change will provide more opportunity for people with disabilities who want to work to be able to do so without losing their Medicaid benefits. People with disabilities who have jobs are more self-sufficient in the long-term and may rely less on government services. This rule change is a federal work incentive authorized under Section 1905(q) of the Social Security Act.

This proposed rule adds language that will allow continued Medicaid coverage to individuals with disabilities who received Medicaid and AABD state cash assistance before they began employment or increased their level of earnings. The rule change will allow these individuals to continue to receive Medicaid after they have received an increase in earnings that would cause them to lose Medicaid benefits under the current rules.

In March 2005, the Department of Health and Welfare adopted this rule as a temporary rule with an effective date of April 1, 2005. The temporary rule was published in the March 2, 2005, Administrative Bulletin, Volume 05-3, pages 20 and 21. With this publication the Department is initiating proposed rulemaking.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

This rulemaking has no fiscal impact on the state general fund. One hundred percent (100%) of the funds that will be used are federal funds provided by the Medicaid Infrastructure Grant.

Projected operational costs based on current forecasting:
First Year Costs: $8,923
Fifth Year Costs: $0 (NOTE: All costs for this rule change are “up front” in the first year).

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this change was made to bring the rules into compliance with Section 1905(q) of the Social Security Act.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Linda Palmer at (208) 334-5815.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 17th day of May, 2005.

Sherri Kovach - Program Supervisor
DHW - Administrative Procedures Section

450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**782. ~~*PARTICIPANT ENTITLED TO*~~ MEDICAID BENEFITS UNDER SECTION 1619(b) ~~*SSI ELIGIBILITY STATUS*~~ OF THE SOCIAL SECURITY ACT.**
~~*A participant is eligible for Medicaid as a blind or disabled SSI recipient, if SSA is evaluating him for, or has granted him, SSI eligibility status under Section 1619b of the Social Security Act, for as long as his 1619b status continues.*~~ A participant may be eligible for Medicaid under Section 1619(b) of the Social Security Act either under federal or state criteria, depending on his circumstances. ~~*(7-1-99)*~~(4-1-05)T

**01. Federally Qualified Under SSA Section 1619(b)**. An SSI recipient with a disability, previously eligible for SSI cash, who, because of earnings from employment, no longer meets the financial eligibility requirements for SSI cash, is eligible for Medicaid. SSA determines the qualification for eligibility under Section 1619(b). (4-1-05)T

**02. State-Only Qualified Under SSA Section 1619(b)**. An AABD cash participant with a disability, who, because of earnings from employment, no longer meets the financial eligibility requirements for AABD cash, may be eligible for Medicaid. The Department determines eligibility for State-only Section 1619(b) Medicaid. State-only Section 1619(b) Medicaid is authorized under Section 1905(q) of the Social Security Act. (4-1-05)T

**a.** Eligibility Requirements. A participant must meet all of the following requirements to be eligible for State-only 1619(b) Medicaid: (4-1-05)T

i. The participant received AABD cash in the month prior to the first month of his eligibility under this Section of rule. (4-1-05)T

ii. The participant is under age sixty-five (65). (4-1-05)T

iii. The participant continues to have a disability. (4-1-05)T

iv. The participant must depend on Medicaid coverage to continue working. An individual depends on Medicaid coverage if he: (4-1-05)T

(1) Used Medicaid coverage within the past twelve (12) months; or (4-1-05)T

(2) Expects to use Medicaid coverage in the next twelve (12) months; or (4-1-05)T

(3) Would be unable to pay unexpected medical bills in the next twelve (12) months without Medicaid coverage. (4-1-05)T

v. The participant is not able to afford medical insurance equivalent to Medicaid, including attendant care. The participant meets this requirement if his earnings are under the limit referred to in Subsection 782.02.a.vii. of this rule. (4-1-05)T

vi. The participant continues to meet all of the non-disability eligibility requirements in these rules. (4-1-05)T

vii. The participant's annual gross earned income is less than the current calendar year's charted threshold for Idaho as developed by SSA for federal qualification for Section 1619(b) Medicaid. The charted threshold for Idaho is found at: http://policy.ssa.gov/poms.nsf/lnx/0502302200. (4-1-05)T

**b.** Ending State-Only 1619(b) Medicaid. State-only Section 1619(b) Medicaid ends when the participant meets one (1) of the following criteria: (4-1-05)T

i. The participant is no longer eligible for AABD cash for a reason other than excess earned income; (4-1-05)T

ii. The participant's gross earned income is equal to or more than the current calendar year's annual earnings threshold for Idaho developed by the Social Security Administration for Federal Section 1619(b) Medicaid; (4-1-05)T

iii. The participant is age sixty-five (65) or older; or (4-1-05)T

iv. The participant regains eligibility for AABD cash. (4-1-05)T

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

### DOCKET NO. 16-0305-0502

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, Idaho Code, and 20 CFR Part 421.

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

**The 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 rules was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 239 through 246**.

**The Department has had a request for formal rules negotiation on the proposed changes to Sections 837, 838, and 871 on Life Estates and Annuities as Asset Transfers and the Treatment of Trusts. Section 837 is being left as it currently is in rule, and Section 838 will be a Reserved Section in rule. Section 871 will be left as it currently is in rule, with the exception of correcting a reference cites**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. The anticipated fiscal impact for these rule changes are case-by-case benefits and are not a direct result of these rule changes.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Peggy Cook at (208) 334-5969.

DATED this 15th day of November, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section

450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 334-6558 fax
kovachs@idhw.state.id.us e-mail


## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-214, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

**The Department is amending the rules to remove ambiguities that have resulted in legal challenges. The present wording of the rules allows for misinterpretation regarding the use of trusts and annuities. Individuals move assets and resources in order to become eligible for Medicaid services. These rule changes will explain the use and limitations of revocable trusts as well as clarify the description of and consideration of annuities and life estates. By tightening up these rules, the Department can better assure that the state's limited resources will be available for individuals who truly need assistance**.

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

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

**The anticipated fiscal impact for these rule changes are case-by-case benefits and are not a direct result of these rule changes**.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are clarifying and aligning current rules with statute and federal law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN**

**COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 8th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**000. LEGAL AUTHORITY.**
The Idaho Department of Health and Welfare, according to Sections 56-20~~*1*~~2 ~~*through 56-233*~~, Idaho Code, adopts these rules for the administration of public assistance programs.
~~*(7-1-99)*~~(  )

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

**007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.**

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

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

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

**04. Telephone**. (208) 334-5500. (  )

**05. Internet Website**. The Department Internet website is http://www.healthandwelfare.idaho.gov/. (  )

**008. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records**. The use or disclosure of information related to Department client records covered by these rules must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209. (  )

**02. Public Records.** The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for examining and copying public

records are made. Unless otherwise exempted, all public records in the custody of the Department of Health and Welfare are subject to disclosure. ( )

**00~~7~~9. -- 049. (RESERVED).**

*(BREAK IN CONTINUITY OF SECTIONS)*

**742. COMMUNITY SPOUSE RESOURCE ALLOWANCE.**
The CSRA protects resources for the community spouse. The CSRA is determined by subtracting the greater of the minimum resource allowance, or the spousal share from the couple's total combined resources as of the first day of the application month. The deduction must not be more than the maximum resource allowance at the time eligibility is determined. ~~(7-1-99)~~( )

*(BREAK IN CONTINUITY OF SECTIONS)*

**801. INELIGIBLE NON-CITIZEN WITH EMERGENCY MEDICAL CONDITION.**
A~~*n ineligible legal or illegal*~~ non-citizen, who is otherwise ineligible only because of his status as a non-citizen, is eligible only for medical services necessary to treat an emergency medical condition. ~~(7-1-99)~~( )

**01. Emergency Medical Condition**. An emergency medical condition can reasonably be expected to seriously harm the patient's health, cause serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part, without immediate medical attention. The Division of Medicaid determines if the condition is an emergency and the services necessary to treat it. (7-1-99)

**02. Effective Date of Eligibility**. Medicaid eligibility begins no earlier than the date the participant experienced the medical emergency and ends the date the emergency condition stops. The Division of Medicaid determines the beginning and ending dates. (7-1-99)

*(BREAK IN CONTINUITY OF SECTIONS)*

**831. ASSET TRANSFER RESULTING IN PENALTY.**
Starting August 11, 1993, the participant is subject to a penalty if he transfers his income or resources for less than fair market value. The asset transfer penalty applies to Medicaid services received October 1, 1993 and later. Excluded resources, other than the home and associated property, are not subject to the asset transfer penalty. The asset transfer penalty applies to a Medicaid participant in long-term care or HCBS. A participant in long-term care is a patient in a nursing facility or a patient in a medical institution, requiring and receiving the level of care provided in a nursing facility. (5-3-03)

**01. Rebuttable Presumption**. Unless a transfer meets the requirements of Section ~~*840*~~841 of these rules, it is presumed that the transfer was made for the purpose of qualifying for Medicaid. The asset transfer penalty is applied unless the participant shows that the asset transfer would not have affected his eligibility for Medicaid or the transfer was made for another purpose than qualifying for Medicaid. ~~*(5-3-03)*~~(  )

**02. Contract for Services Provided by a Relative**. A contract for personal services to be furnished to the participant by a relative is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows that: (3-15-02)

**a.** A written contract for personal services was signed before services were delivered. The contract must require that payment be made after services are rendered. The contract must be dated and the signatures notarized. Either party must be able to terminate the contract; and (3-15-02)

**b.** The contract must be signed by the participant or a legally authorized representative through a power of attorney, legal guardianship or conservatorship. A representative who signs the contract must not be the provider of the personal care services under the contract; and (3-15-02)

**c.** Compensation for services rendered must be comparable to rates paid in the open market. (3-15-02)

**03. Transfer of Income or Resources**. Transfer of income or resources includes reducing or eliminating the participant's ownership or control of the asset. (4-5-00)

**04. Transfer of Income or Resources by a Spouse**. A transfer by the participant's spouse of either spouse's income or resources, before eligibility is established, subjects the participant to the asset transfer penalty. After the participant's eligibility is established, a transfer by the spouse of the spouse's own income or resources does not subject the participant to the asset transfer penalty. (4-5-00)

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

**837. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.**
Conditions for determining if a life estate is an asset transfer for less than fair market value are listed in Subsection 837.01 of this rule. The purchase of an annuity is an asset transfer that is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows the purchase of the annuity would not have affected his eligibility for Medicaid or, the payment from the annuity is not greater than necessary to meet the reasonable and ordinary monthly needs of the beneficiary. For the purposes of Section 837, the reasonable and ordinary monthly needs are those defined by the maximum community spouse allowance at Section 725 of these rules. The participant must also show that the annuity meets the conditions in Subsections 837.03 and 837.04 of this rule. (5-3-03)

**01. Life Estate**. A life estate worth less than the value of the transferred real property is subject to the asset transfer penalty. To compute the value of the life estate, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

**TABLE 837.01 - LIFE ESTATE REMAINDER TABLE**

| Age | Life Estate Remainder | Age | Life Estate Remainder | Age | Life Estate Remainder | Age | Life Estate Remainder |
|---|---|---|---|---|---|---|---|
| **0** | .02812 | **1** | .01012 | **2** | .00983 | **3** | .00922 |
| **4** | .01019 | **5** | .01062 | **6** | .01116 | **7** | .01178 |
| **8** | .01252 | **9** | .01337 | **10** | .01435 | **11** | .01547 |
| **12** | .01671 | **13** | .01802 | **14** | .01934 | **15** | .02063 |
| **16** | .02185 | **17** | .02300 | **18** | .02410 | **19** | .02520 |
| **20** | .02635 | **21** | .02755 | **22** | .02880 | **23** | .03014 |
| **24** | .03159 | **25** | .03322 | **26** | .03505 | **27** | .03710 |
| **28** | .03938 | **29** | .04187 | **30** | .04457 | **31** | .04746 |
| **32** | .05.058 | **33** | .05.392 | **34** | .05.750 | **35** | .06132 |
| **36** | .06540 | **37** | .06974 | **38** | .07433 | **39** | .07917 |
| **40** | .08429 | **41** | .08970 | **42** | .09543 | **43** | .10145 |
| **44** | .10779 | **45** | .11442 | **46** | .12137 | **47** | .12863 |
| **48** | .13626 | **49** | .14422 | **50** | .15257 | **51** | .16126 |
| **52** | .17031 | **53** | .17972 | **54** | .18946 | **55** | .19954 |
| **56** | .20994 | **57** | .22069 | **58** | .23178 | **59** | .24325 |
| **60** | .25509 | **61** | .26733 | **62** | .27998 | **63** | .29304 |
| **64** | .30648 | **65** | .32030 | **66** | .33449 | **67** | .34902 |
| **68** | .36390 | **69** | .37914 | **70** | .39478 | **71** | .41086 |
| **72** | .42739 | **73** | .44429 | **74** | .46138 | **75** | .47851 |
| **76** | .49559 | **77** | .51258 | **78** | .52951 | **79** | .54643 |
| **80** | .56341 | **81** | .58033 | **82** | .59705 | **83** | .61358 |
| **84** | .63002 | **85** | .64641 | **86** | .66236 | **87** | .67738 |
| **88** | .69141 | **89** | .70474 | **90** | .71779 | **91** | .73045 |
| **92** | .74229 | **93** | .75308 | **94** | .76272 | **95** | .77113 |
| **96** | .77819 | **97** | .78450 | **98** | .79000 | **99** | .79514 |
| **100** | .80025 | **101** | .80468 | **102** | .80946 | **103** | .81563 |
| **104** | .82144 | **105** | .83038 | **106** | .84512 | **107** | .86591 |
| **108** | .89932 | **109** | .95455 | | | | |

(3-15-02)

**02. Irrevocable Annuity**. An irrevocable annuity is an asset transfer if it does not provide fair market value to the participant. To provide fair market value, an irrevocable annuity must meet life expectancy and annual interest tests listed in Subsections 837.03 and 837.04 of this rule. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. The sixty (60) month look-back applies.
(5-3-03)

**03. Irrevocable Annuity Life Expectancy Test**. The participant's life expectancy, shown in the following table, must equal or exceed the term of the annuity. Using Table 837.03 compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

**TABLE 837.03 - LIFE EXPECTANCY TABLE**

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

(3-15-02)

**04. Irrevocable Annuity Annual Interest Test**. The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. The participant can rebut the five percent (5%) interest test. He must show that single premium annuities were not offered by insurers when the annuity was purchased and it would not be practical to exchange the annuity for one with a higher interest rate. Insurers must be rated excellent or superior by an insurance rating firm such as A.M. Best Co. (5-3-03)

**05. Revocable Annuity**. The surrender amount of a revocable annuity is a resource. Early surrender of a revocable annuity is not an asset transfer for less than fair market value. (7-1-99)

**838. (RESERVED).**

**83~~8~~9. TRUSTS AS ASSET TRANSFERS.**
A trust established wholly or partly from the participant's assets is an asset transfer. Assets transferred to a trust on or after August 11, 1993 are subject to the asset transfer penalty, regardless of when the trust was established. If the trust includes assets of another person, the asset transfer penalty applies to the participant's share of the trust. (7-1-99)

**~~839~~840.TRANSFER OF JOINTLY-OWNED ASSET.**
Transfer of an asset owned jointly by the participant and another person is considered a transfer by the participant. The participant's share of the asset is used to compute the penalty. If the participant and his spouse are joint owners of the transferred asset, the couple's combined ownership is used to compute the penalty. If the spouse becomes eligible for long-term care Medicaid, the rest of the period of restricted coverage is divided between the participant and spouse. (7-1-99)

~~***840. (RESERVED).***~~

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

**871. TREATMENT OF TRUSTS.**
These trust treatment rules apply to all Medicaid participants. These rules apply to trusts established with the participant's assets on August 11, 1993 or later, and to trusts funded August 11, 1993 or later. This Section does not apply to an irrevocable trust if the participant meets the undue hardship exemption in Subsection ~~*840*~~841.1~~2~~1 of these rules. Assets transferred to a trust are subject to the asset transfer penalty. Section 871 *does not apply* to a trust *established by a will.* ~~*(7-1-99)*~~(____)

**01. Revocable Trust**. Revocable trusts are treated as listed in Subsections 871.01.a. through 871.01.d. of these rules. A revocable burial trust is not a trust for the purposes of Subsection 871.01 of these rules. ~~*(7-1-99)*~~(____)

**a.** The body (corpus) of a revocable trust is a resource. (7-1-99)

**b.** Payments from the trust to or for the participant are income. (7-1-99)

**c.** Any other payments from the trust are an asset transfer, triggering an asset transfer penalty period. (7-1-99)

**d.** The home and adjoining property loses its exclusion when transferred to a revocable trust, unless the participant or spouse is the sole beneficiary of the trust. The home is excluded again if removed from the trust. The exclusion restarts the next month. (7-1-99)

**02. Irrevocable Trust**. Irrevocable trusts are treated as listed in Subsections 871.02.a. through 871.02.g. of these rules. ~~(7-1-99)~~(  )

**a.** The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the participant, is a resource. (7-1-99)

**b.** Payments made to or for the participant are income. (7-1-99)

**c.** Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. (7-1-99)

**d.** Any part of the trust from which payment cannot be made to, or for the benefit of, the participant under any circumstances, is an asset transfer. (7-1-99)

**e.** The effective date of the transfer is the date the trust was established, or the date payments to the participant were foreclosed. (7-1-99)

**f.** The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. (7-1-99)

**g.** An irrevocable burial trust is not subject to treatment under Subsection 871.02 of these rules, unless funds in the trust can be paid for a purpose other than the participant's funeral and related expenses. The trust can provide that funds not needed for the participant's funeral expenses are available to reimburse Medicaid, or to go to the participant's estate. ~~(7-1-99)~~(  )

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

~~***916. – 995. (RESERVED).***~~

~~***996. CONFIDENTIALITY.***~~
~~*Information received by the Department, from participants, is subject to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department*~~

~~*Records".*~~ ~~*(7-1-99)*~~

**~~997~~916. -- 999.(RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

### DOCKET NO. 16-0305-0503

### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is April 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202, Idaho Code, and 20 CFR Part 421.

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

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Inadvertently the word "clothing" was not stricken entirely in Section 300, and the rule is being amended to delete the word. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule**.

**Only the sections that have changes that are different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 247 through 251**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no anticipated fiscal impact to the state general fund as a result of these rule changes.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Peggy Cook at (208) 334-5969.

DATED this 14th day of November, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
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## *The Following Notice Was Published With The Temporary And Proposed Rule*

**EFFECTIVE DATE: The effective dates of the temporary rule are April 1, 2005 and July 1, 2005.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, Idaho Code, and 20 CFR Part 421.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

**The rule changes in this docket will benefit those individuals needing assistance through the AABD program. Due to changes in the Social Security Act on asset definitions and criteria, these rules needed to be aligned with federal regulations. The rules for these changes are effective retroactive to April 1, 2005. Beginning July 1, 2005, federal law requires Idaho to participate in the Medicare Part D Prescription Drug Program for certain low income applicants. The guidelines for this program are effective as of July 1, 2005**.

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

**These rule changes are necessary for compliance with deadlines in governing law for this federal program, and confers a benefit**.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

There is no anticipated fiscal impact to the state general fund as a result of these rule changes.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to federal law and were not negotiable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 5th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**004. ~~*RULE AVAILABILITY*~~ INCORPORATION BY REFERENCE.**
~~*Copies of these rules are available from the Administrative Procedures Section, 10th Floor, Pete T. Cenarrusa Building - 450 West State Street, P.O. Box 83720, Boise, Idaho 83720-0036.*~~ The Department is adopting by reference the "Medicare Modernization Act - Prescription Drug Program Guidance to states for the Low Income Subsidy (LIS)," dated May 25, 2005. The guidelines may be viewed at the main office of the Department of Health and Welfare. It is also available online at: http://www.cms.hhs.gov/medicarereform/guidance5-25-05.pdf.
~~*(7-1-99)*~~(7-1-05)T

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

**222. VEHICLES.**
Vehicles are excluded as resources as described in Subsection~~s~~ 222.01~~ *through 222.02*~~ of these rules. If more than one (1) vehicle is owned, the exclusion applies in the best way for the participant. ~~*(7-1-99)*~~(4-1-05)T

**01. One Vehicle Excluded**. One (1) vehicle is excluded, regardless of value~~ *if the vehicle is:*~~. ~~*(7-1-99)*~~(4-1-05)T

~~***a.*** *Necessary for employment.* *(7-1-99)*~~

~~***b.*** *Necessary for the treatment of a specific or regular medical problem.* *(7-1-99)*~~

~~***c.*** *Modified for operation by, or the transportation of, a handicapped person.* *(7-1-99)*~~

~~***d.*** *Necessary, because of climate, terrain, distance or similar factors, for the performance of essential daily activities.* *(7-1-99)*~~

~~***02. Vehicle Value Excluded Up to Four Thousand Five Hundred Dollars****. If no vehicle is excluded under Subsection 222.01, one (1) vehicle is excluded up to a fair market value of four thousand five hundred dollars ($4,500). If the fair market value exceeds four thousand five hundred dollars ($4,500), the excess value counts as a resource.* *(7-1-99)*~~

**0~~3~~2. Other Vehicles Not Excluded**. The equity value of a vehicle not excluded under Subsection 222.01~~ *or 222.02*,~~ of these rules is a resource. ~~*(7-1-99)*~~(4-1-05)T

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

**234. PERSONAL PROPERTY DEFINITION.**
Personal property is ~~*any*~~ property ~~*not real property*~~ that an individual acquires or holds because of its value or as an investment. Personal property is not considered household goods or personal effects. Personal property is considered a countable resource. ~~*(7-1-99)*~~(4-1-05)T

**235. ~~*FULLY*~~ EXCLUDED HOUSEHOLD GOODS AND PERSONAL EFFECTS.**
~~*One (1) wedding ring and one (1) engagement ring, per participant, are excluded regardless of value. Medical equipment and other items required by a person's physical condition are excluded*~~ Household goods and personal effects are excluded from resources, regardless of their dollar value. ~~*(7-1-99)*~~(4-1-05)T

**236. ~~*EXCLUDED HOUSEHOLD GOODS AND PERSONAL EFFECTS*~~ (RESERVED).**
~~*Two thousand dollars ($2,000) equity value of household goods and personal effects is not counted toward the resource limit.* *(7-1-99)*~~

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

**268. SUPPORT AND MAINTENANCE ASSISTANCE (HOME ENERGY ASSISTANCE).**
Support and Maintenance Assistance (SMA) is in-kind support and maintenance, or cash paid for food~~, *clothing*,~~ or shelter needs. It includes Home Energy Assistance. SMA Home Energy Assistance is aid to meet the costs of heating or cooling a home. SMA and Home Energy

Assistance are excluded resources. ~~*(7-1-99)*~~(4-1-05)T

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

**300. INCOME DEFINITION.**
Income is anything that can be used to meet needs for food, ~~*clothing,*~~ or shelter. Income is cash, wages, pensions, in-kind payments, inheritances, gifts, awards, rent, dividends, interest, or royalties the participant receives during a month. ~~*(7-1-99)*~~(4-1-05)T

**01. Cash Income**. Cash income is currency, checks, money orders, or electronic funds transfers. Cash income includes Social Security checks, unemployment checks, and payroll checks. (7-1-99)

**02. In-Kind Income**. In-kind income is not cash. In-kind income is food~~*, clothing,*~~ or shelter. Wages paid as in-kind earnings, such as food~~*, clothing*~~ or shelter, are counted as unearned income. Other in-kind income is not counted. ~~*(7-1-99)*~~(4-1-05)T

**03. Inheritances**. An inheritance is cash, a right, or noncash items received as the result of someone's death. Cash or noncash items in an inheritance are income the month received and a resource the next month. A contested inheritance is not counted as income until the contest is settled and money is distributed. (7-1-99)

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

**316. BLIND OR DISABLED STUDENT ~~*CHILD*~~ EARNED INCOME.**
To qualify for this exclusion, the ~~*child*~~ student must be blind or disabled. The ~~*child*~~ student must be under age twenty-two (22). ~~*The child must not be married or the head of a household.*~~ The ~~*child*~~ student must be ~~*a student*~~ regularly attending high school, college, university or course of vocational or technical training~~,~~ designed to prepare him for gainful employment. ~~*Up to one thousand two hundred ninety dollars ($1,290) per month of earned income, is excluded. The maximum exclusion is five thousand two hundred dollars ($5,200) in a calendar year.*~~ The maximum monthly and annual exclusions cannot exceed the limits set by SSI for the current year. ~~*(3-15-02)*~~(4-1-05)T

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

**324. GRANTS, SCHOLARSHIPS, AND FELLOWSHIPS.**
Any grant, scholarship, or fellowship, not administered by the Commissioner of Education, and used for paying tuition, fees, or required educational expenses is excluded. This exclusion does not apply to any portion set aside or actually used for food~~*, clothing,*~~ or shelter. ~~*(7-1-99)*~~(4-1-05)T

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

**333. GOVERNMENT MEDICAL OR SOCIAL SERVICES.**
Governmental payments authorized by Federal, State, or local law, for medical or social services, are excluded. Any cash provided by a nongovernmental medical or social services organization (including medical and liability insurers) for medical or social services already received is excluded. ~~*Emergency Assistance (EA) medical and social services payments, issued by the Division of Family and Childrens Services, are excluded.*~~ ~~*(7-1-99)*~~(4-1-05)T

**01. Medical Services**. Medical services are diagnostic, preventive, therapeutic, or palliative treatment. Treatment must be performed, directed, or supervised by a State licensed health professional. Medical services include room and board provided during a medical confinement. Medical services include in-kind medical items such as prescription drugs, eye glasses, prosthetics, and their maintenance. In-kind medical items include devices intended to bring the physical abilities of a handicapped person to a par with an unaided person who is not handicapped. Electric wheelchairs, modified scooters, and ~~*seeing eye dogs*~~ service animals and their ~~*dog*~~ food are in-kind medical items. ~~*(7-1-99)*~~(4-1-05)T

**02. Social Service**. A social service is any service, other than medical. A social service helps a handicapped or socially disadvantaged person to function in society on a level comparable to a person not handicapped or disadvantaged. Housebound and Aid and Attendance Allowances, including Unusual Medical Expense Allowances, received from the Veterans Administration are excluded. (7-1-99)

**334. HOME ENERGY ASSISTANCE (HEA) AND SUPPORT AND MAINTENANCE ASSISTANCE (SMA).**
SMA is in-kind support and maintenance, or cash paid for food~~*, clothing,*~~ or shelter needs. SMA includes HEA. HEA is aid to meet the costs of heating or cooling a home. SMA must be provided in-kind by a nonprofit organization. HEA must be provided in cash or in-kind by suppliers of home heating gas or oil or a municipal utility providing home energy. SMA and HEA are excluded. ~~*(7-1-99)*~~(4-1-05)T

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

**338. INFREQUENT OR IRREGULAR INCOME.**
~~*Infrequent or irregular income, under ten dollars ($10) per month earned income and twenty dollars ($20) per month unearned income, is*~~ The first thirty dollars ($30) of earned income and the first sixty dollars ($60) of unearned income per calendar quarter are excluded, when they are infrequent or irregular payments. ~~*If the infrequent or irregular income exceeds these limits the total amount received is counted.*~~ Income is infrequent if the participant ~~*gets*~~ receives it once in a calendar quarter from a single source. Income is irregular if the participant could not reasonably

expect to receive it. ~~*(7-1-99)*~~(4-1-05)T

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

**502. SPECIAL NEEDS ALLOWANCES.**
Special needs allowances are a restaurant meals allowance and a ~~*guide dog*~~ service animal food allowance. ~~*(7-1-99)*~~(4-1-05)T

**01. Restaurant Meals**. The restaurant meals allowance is fifty dollars ($50) monthly. A physician must state the participant is physically unable to prepare food in his home. A participant able to prepare his food, but living in a place where cooking is not permitted, may be budgeted the restaurant meals allowance for up to three (3) months. (7-1-99)

**02. ~~*Guide Dog*~~ Service Animal Food**. The ~~*guide dog*~~ service animal food allowance is seventeen dollars ($17) monthly. The allowance is budgeted for a blind or disabled participant, using a ~~*guide dog*~~ service animal trained by a recognized ~~*guide dog*~~ school. ~~*(7-1-99)*~~(4-1-05)T

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

**873. PAYMENTS FROM AN EXEMPT TRUST FOR DISABLED PERSON OR POOLED TRUST.**
Cash payments from an exempt trust for a disabled person or a pooled trust must be treated as described in Subsections 873.01 through 873.04 of these rules. ~~*(7-1-99)*~~(4-1-05)T

**01. Payments From Exempt Trust**. Cash payments from an exempt trust for a disabled person are income in the month received. (7-1-99)

**02. Payments From Pooled Trust**. Cash payments from a pooled trust made directly to the participant are income in the month received. (7-1-99)

**03. Payments for Food~~*, Clothing,*~~ or Shelter**. Payments for the participant's food~~*, clothing*~~ or shelter are income in the month paid. The payments for food~~*, clothing*~~ or shelter are valued at one-third (1/3) of the AABD budgeted needs for the participant's living arrangement. ~~*(7-1-99)*~~(4-1-05)T

**04. Payments Not Made to Participant**. Payments from the exempt trust not made to, or on behalf of, the participant are an asset transfer. (7-1-99)

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

### DOCKET NO. 16-0309-0502

### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code and Senate Concurrent Resolution 110, 2001 Legislative Session.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2005, Idaho Administrative Bulletin, Vol. 05-7, pages 17 through 19.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Chris Baylis at (208) 364-1891.

DATED this 11th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
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Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

### *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given this

agency has adopted a proposed rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2005.

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:

Approximately two years ago individuals receiving cash assistance through the Division of Welfare were converted to Medicaid with their existing assessed level of care. However, when individuals were re-assessed using the Department's Uniform Assessment Instrument (UAI), their level of care was generally assessed at a lower level than when they entered the program. After analysis, it was discovered that the UAI did not sufficiently score individuals who had behavioral issues because it was designed primarily to assess physical functional capabilities. This proposed rule change will create a unique identifier in the UAI that will identify persons living in Certified Family Homes and Assisted Living Facilities with specific diagnosis of mental illness, mental retardation and/or Alzheimer's Disease at a unique level of care that reflects behavioral needs and ties to an established reimbursement rate. This rule change adds an additional level of care which reflects minimum resources needed for providing services to individuals with specific behavioral needs of 12.5 hours per week of personal care services based on documented diagnosis of mental illness, mental retardation, or Alzheimer's Disease. The dollar amounts used as maximum calculated fees were deleted because they are outdated and not used at this time. The calculations now use a uniform term for the calculated fee.

In February 2005, the Department of Health and Welfare adopted this rule as a temporary rule with an effective date of March 1, 2005. The temporary rule was published in the Idaho Administrative Bulletin, Volume 05-2, February 2, 2005, pages 25 through 27. With this publication the Department is initiating proposed rulemaking.

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

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

The effect of this rule change is budget neutral. There is no anticipated cost to state general funds as a result of this rule.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change is being made to meet the objectives of Senate Concurrent Resolution 110 and confers a benefit there was no negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions

concerning the temporary rule, contact Chris Baylis at (208) 364-1891.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 1st day of June, 2005.

## *The Following Notice Was Published With The Temporary Rule*

**EFFECTIVE DATE: The effective date of the temporary rule is March 1, 2005**.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

**Approximately two years ago individuals receiving cash assistance through the Division of Welfare were converted to Medicaid with their existing assessed level of care. However, when individuals were re-assessed using the Department's Uniform Assessment Instrument, their level of care was generally assessed at a lower level than when they entered the program. After analysis, it was discovered that the UAI did not sufficiently score individuals who had behavioral issues because it was designed primarily to assess physical functional capabilities. This proposed rule change will create a unique identifier in the UAI that will identify persons living in Certified Family Homes and Assisted Living Facilities with specific diagnosis of mental illness, mental retardation and/or Alzheimer's Disease at a unique level of care that reflects behavioral needs and ties to an established reimbursement rate. This rule change adds an additional level of care which reflects minimum resources needed for providing services to individuals with specific behavioral needs of 12.5 hours per week of personal care services based on documented diagnosis of mental illness, mental retardation, or Alzheimer's Disease. The dollar amounts used as maximum calculated fees were deleted because they are outdated and not used at this time. The calculations now use a uniform term for the calculated fee.**

**TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because the rule change is conferring a benefit. Providers will be able to receive a greater reimbursement for Medicaid participants and access for participants with these diagnosis should improve.**

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Chris Baylis at (208) 364-1891.

DATED this 16th day of December, 2004.

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**THE FOLLOWING IS THE TEXT FOR THE PENDING RULE**

**148. PROVIDER REIMBURSEMENT FOR PERSONAL ASSISTANCE SERVICES.**

**01. Reimbursement Rate**. Personal assistance providers will be paid a uniform reimbursement rate for service as established by the Department pursuant to Section 39-5606, Idaho Code, on an annual basis. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-30-01)

**02. Calculated Fee**. The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for non-medical transportation, unless approved by the RMU under a Home and Community-Based Services (HCBS) waiver, or provider transportation to and from the participant's home. Fees will be calculated as follows: (3-30-01)

**a.** Annually Medicaid will conduct a poll of all Idaho nursing facilities and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, certified and non-certified nurse's aides) in Idaho to be used for the reimbursement rate to be effective on July 1 of that year. (3-30-01)

**b.** Medicaid will then establish payment levels for personal assistance agencies for personal assistance services as follows: (3-30-01)

i. Weekly service needs of zero to sixteen (0-16) hours under the State Medicaid Plan, or a HCBS waiver:

| | | | |
|---|---|---|---|
| Personal Assistance Agencies | WAHR x 1.55 | = | $ amount/hour |

(3-30-01)

ii. Extended visit, one (1) child (eight and one-quarter (8.25) hours up to twenty-four

(24) hours):

| | | | |
|---|---|---|---|
| Personal Assistance Agencies | (WAHR x actual hours of care up to 5 hours x 1.55) plus ($.65 x 1.55 hours on site on-call) | = | $ amount/hour ~~(Maximum $ 63.65)~~ |
| Licensed Child Foster Homes | (WAHR x actual hours of care up to 5 hours x 1.22) plus ($.65 x 1.22 x actual hours on site on-call) | = | $ amount/hour ~~(Maximum $ 60.36)~~ |

~~(3-30-01)~~(3-1-05)T

iii. Extended visit, two (2) children (eight and one-quarter (8.25) hours up to twenty-four (24) hours):

| | | | |
|---|---|---|---|
| Personal Assistance Agencies | (WAHR x actual hours of care up to 4 hours) x (1.55 plus $.65 x 1.55 x hours on site on-call) | = | $ amount/hour ~~(Maximum $ 54.26)~~ |
| Licensed Child Foster Homes | (WAHR x hours actual care up to 4 hours x 1.22) plus ($.65 x 1.22 x hours on site on-call) | = | $ amount/hour ~~(Maximum $ 44.33)~~ |

~~(3-30-01)~~(3-1-05)T

iv. Adult participants living in Residential/Assisted Living Facilities (RALF) or Certified Family Homes will receive personal care services at a rate based on their care level. Each level will convert to a specific number of hours of personal care services. (5-3-03)

(1) Reimbursement Level I - One point twenty-five (1.25) hours of personal care services per day or eight point seventy-five (8.75) hours per week. ~~(5-3-03)~~(3-1-05)T

(2) Reimbursement Level II - One point five (1.5) hours of personal care services per day or ten point five (10.5) hours per week. ~~(5-3-03)~~(3-1-05)T

(3) Reimbursement Level III - Two point twenty-five (2.25) hours of personal care services per day or fifteen point seventy-five (15.75) hours per week. ~~(5-3-03)~~(3-1-05)T

(4) Reimbursement Level IV - One point seventy-nine (1.79) hours of personal care services per day or twelve point five (12.5) hours per week. This level will be assigned based on a documented diagnosis of mental illness, mental retardation, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, mental retardation, or Alzheimer's disease the provider reimbursement rate will be the higher amount as described in Subsection 148.02.b.iv.(3) of these rules. (3-1-05)T

c. The attending physician or authorized provider will be reimbursed for services provided using current payment levels and methodologies for other services provided to eligible participants. (3-30-01)

**d.** The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Client evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the RMU. (1-1-91)

i. The number of supervisory visits by the RN or QMRP to be conducted per

calendar quarter will be approved as part of the PCS care plan by the RMU. (3-30-01)

ii. Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the RMU. (1-1-91)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

### DOCKET NO. 16-0309-0503

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code, and House Bill No. 190 passed by the 2005 Legislature now codified in Section 56-118, Idaho Code.

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

**House Bill No. 190 passed by the 2005 Idaho Legislature requires the Department to discuss reimbursement rates annually with Medicaid mental health and developmental disability providers. An annual report to the Legislature is also required. This rule is being amended based on comments received during the comment period and the public hearing. Section 061.05 has been amended to clarify that the contents of the Department's annual report will be in compliance with Section 56-118, Idaho Code regarding those items required to be in the annual report**.

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule**.

**Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 254 through 256**.

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

Current Medicaid staff will conduct the surveys and prepare a report for the Legislature. The cost of their time to perform this work will be no more than $7,000. This staff time will be diverted from other projects. When the survey information is shared with the Legislature, a possible result

may be an increase in Medicaid reimbursement to providers.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Sheila Pugatch at (208) 364-1817.

DATED this 15th day of November, 2005.


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## *The Following Notice Was Published With The Temporary And Proposed Rule*

**EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code, and House Bill No. 190 passed by the 2005 Legislature now codified in Section 56-118, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

**House Bill No. 190 passed by the 2005 Idaho Legislature requires the Department to discuss reimbursement rates annually with Medicaid mental health and developmental disability providers. An annual report to the Legislature is also required. This rulemaking will identify: (1) how rate comparisons with other state Medicaid programs will be conducted; (2) how costs of Medicaid service providers of mental health and developmental disabilities will be obtained and evaluated; (3) current access to services; and (4) identify other methods used to compile an annual report to the Department and Legislature on reimbursement**.

**TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs**.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

**Current Medicaid staff will conduct the surveys and prepare a report for the Legislature. The cost of their time to perform this work will be no more than $7,000. This staff time will be diverted from other projects. When the survey information is shared with the Legislature, a possible result may be an increase/decrease in Medicaid reimbursement to providers**.

**NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 1, 2005 - Vol. 05-6, page 31. A negotiated rule meeting was held on June 10, 2005 in Boise, Idaho attended by providers, advocates, a legislative representative and Department stakeholders**.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sheila Pugatch at (208) 364-1817.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 11th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**061. COMMUNITY-BASED PROVIDER REIMBURSEMENT REVIEW AND REPORT.**

**01. Annual Review of Reimbursement Rates**. The annual reimbursement rate review does not apply to those providers, services, or both, whose rate adjustments are addressed in Title 56 Chapter 1 and Title 39 Chapter 56 of Idaho Code. Under Section 56-118, Idaho Code, reimbursement rates will be reviewed annually for services rendered by the following community based service providers: (7-1-05)T

**a.** Developmental Disability Agencies; (7-1-05)T

**b.** Psychosocial Rehabilitation Agencies; (7-1-05)T

**c.** Mental Health Clinics; (7-1-05)T

**d.** Residential Habilitation Agencies; (7-1-05)T

**e.** Independent Residential Habilitation Providers (Services provided in Certified Family Homes); and (7-1-05)T

**f.** Targeted Service Coordination/Case Management Agencies. (7-1-05)T

**02. Voluntary Submission of Financial Costs**. The providers identified in Subsection 061.01 of these rules may voluntarily submit financial cost information to the Department by completing a survey developed by the Department. The information submitted is self-reported and unaudited by the Department. Provider-specific information will be kept confidential consistent with Section 9-340D, Idaho Code. The annual reimbursement rate review does not apply to those providers, services, or both, whose rate adjustments are addressed in Title 56 Chapter 1 and Title 39 Chapter 56 of Idaho Code. (7-1-05)T

**03. Survey Form Information Submitted by Providers**. The service providers identified in Section 56-118, Idaho Code and listed in Subsection 061.01 of these rules, will submit the following information on the survey form provided to them by the Department: (7-1-05)T

**a.** Current wages paid to direct service and support service staff; (7-1-05)T

**b.** Other business operating costs; and (7-1-05)T

**c.** Recommendations regarding how to improve coordination of services, management of services, efficiency of service delivery, and quality of service delivery. (7-1-05)T

**04. Information Collected by the Department**. The Department will collect the following information: (7-1-05)T

**a.** Current reimbursement rates from comparable State Medicaid Programs with demographics similar to Idaho; and (7-1-05)T

**b.** Reimbursement rates paid by private or public payers, when available and comparable. (7-1-05)T

**05. Contents of the Department's Report**. The Department will compile a report ~~*to include the following*~~ in compliance with Section 56-118, Idaho Code, and will include, but is not limited to, the following: ~~*(7-1-05)T*~~(7-1-05)T

**a.** Survey results; (7-1-05)T

**b.** Comparison of our reimbursement rates to those paid by comparable State Medicaid programs; (7-1-05)T

**c.** Comparison of our reimbursement rates to those paid by identified private and public payers; and (7-1-05)T

**d.** Cost savings recommendations from providers. (7-1-05)T

**06. Rate Change Recommendations**. The report will contain rate change recommendations from the Department only when one (1) or both of the following exist as specified in 42 U.S.C. Section 1396(a)(30)(A): (7-1-05)T

**a.** Participant access issues related to the attraction and retention of qualified providers; and (7-1-05)T

**b.** Quality of care issues that can be enhanced by rate changes. (7-1-05)T

**07. Submission Date of the Department Report**. The report will be submitted by November 30th of each year to the Director, the Joint Finance-Appropriations Committee, and the Health and Welfare Committees for both the Senate and the House of Representatives. (7-1-05)T

**06~~1~~2. -- 063. (RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.16 - ACCESS TO HEALTH INSURANCE PROGRAM

### DOCKET NO. 16-0316-0501 (NEW CHAPTER)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE: The effective date of the amendment to the temporary rule is July 1, 2005**. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-241, and 56-242, Idaho Code.

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

**This chapter of rule supports the implementation of the Idaho Health Insurance Access Card Act passed during the 2003 Idaho Legislative session. Since the temporary rule published before the program was implemented, revisions needed to be made to these rules to ensure current program requirements are implemented. These changes to the rule are being made to more accurately reflect how the program was operationalized. The rule changes are based on comments received and public input**.

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule**.

**Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the May 4, 2005 Idaho Administrative Bulletin, Vol. 05-5, pages 92 through 100**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. This rulemaking has no fiscal impact to the state general fund. The majority of funding is from federal funding and the remainder will come from the premium tax fund in lieu of utilizing state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Robin Pewtress, Idaho

SCHIP, Director at (208) 364-1892.

DATED this 15th day of November, 2005.


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## *The Following Notice Was Published With The Temporary And Proposed Rule*

**EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005**.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-241 and 56-242, Idaho Code.

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

| | | | |
|---|---|---|---|
| **Date:** | **Tuesday, May 17, 2005** | **Tuesday, May 17, 2005** | **Wednesday, May 18, 2005** |
| **Time:** | **7:00 - 9:00 p.m.** | **7:00 - 9:00 p.m.** | **7:00 - 9:00 p.m.** |
| **Place:** | **Dept. of Health & Welfare** | **Dept. of Health & Welfare** | **Dept. of Health & Welfare** |
| | **1720 Westgate Dr., Suite D** | **2nd Floor Conf. Room** | **1120 Ironwood Dr., Ste 102** |
| | **Boise, ID** | **150 Shoup Ave, Idaho Falls, ID** | **Coeur d'Alene, ID** |

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

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

**This new chapter of rule supports the implementation of the Idaho Health Insurance Access Card Act passed during the 2003 Idaho Legislative session. It describes the Access to Health Care program that provides insurance premium assistance for one thousand (1,000) adults who are either employees or spouses of employees working in an Idaho small business of two (2) to fifty (50) employees. The chapter includes information explaining eligibility criteria,**

**benefits, and reimbursement**.

**TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To comply with deadlines in governing law and confer a benefit to Idahoans**.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

This rulemaking has no fiscal impact to the state general fund. The majority of funding is from federal funding and the remainder will come from the premium tax fund in lieu of utilizing state general funds.

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted. The Department has met with the Advisory Board consisting of small business employers and insurance representatives in development of the rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Robin Pewtress, Idaho SCHIP, Director, at 208-364-1892.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before May 25, 2005.

DATED this 29th day of March, 2005.

Sherri Kovach, Program Supervisor
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**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**IDAPA 16, TITLE 03, CHAPTER 16**

**16.03.16 - ACCESS TO HEALTH INSURANCE PROGRAM**

**000. LEGAL AUTHORITY.**
Under Section 56-202(b), Idaho Code, the Legislature has delegated to the Department of Health and Welfare the responsibility to establish and enforce such rules as may be necessary or proper to administer public assistance programs within the state of Idaho. Under Sections 56-241 and 56-242, Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to implement a Small Business Health Insurance Pilot program, which is a premium assistance program including eligibility criteria, benefits, and reimbursement. This program is named the Access to Health Insurance Program. The Idaho Department of Health and Welfare is the designated agency to administer programs under Title XIX and Title XXI of the Social Security Act. (7-1-05)T

**001. TITLE AND SCOPE.**

**01. Title**. The title of this chapter is IDAPA 16.03.16, "Access to Health Insurance Program". (7-1-05)T

**02. Scope**. Under Sections 56-241 and 56-242, Idaho Code, these rules describe the general provisions regarding the administration of the Access to Health Insurance Program. These rules identify eligibility criteria, benefits, and reimbursement. (7-1-05)T

**03. Policy**. It is the policy of the Department, under Section 56-209(b), Idaho Code, that the Access to Health Insurance Program is available to individuals who are found eligible under these rules. (7-1-05)T

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations for these rules. (7-1-05)T

**003. ADMINISTRATIVE APPEALS.**
All administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

**004. INCORPORATION BY REFERENCE.**
No documents have been incorporated by reference into these rules. (7-1-05)T

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

**01. Office Hours**. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (7-1-05)T

**02. Mailing Address**. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (7-1-05)T

**03. Street Address**. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (7-1-05)T

**04. Telephone**. The telephone number for the Idaho Department of Health and

Welfare is (208) 334-5500. (7-1-05)T

**05. Internet Website**. The Department's internet website is found at "http://www.healthandwelfare.idaho.gov". The program website is "http://www.AccesstoHealthInsurance.idaho.gov". (7-1-05)T

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.** Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". (7-1-05)T

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

**010. DEFINITIONS.**

**01. Adult**. An individual who is at least eighteen (18) years of age and is not a dependent child. (7-1-05)T

**02. Applicant**. An individual applying for premium assistance under these rules who is employed by, or is the spouse or dependent child of someone who is employed by, an Idaho Small Business. (7-1-05)T

**03. Application**. Two (2) forms used to determine eligibility. One (1) is a standard form for insurance coverage and one (1) is a supplemental form for Department use only. (7-1-05)T

**04. COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985)**. A federal law that requires most employers to allow eligible employees and their beneficiaries to continue to self-pay for their coverage after it normally terminates for up to eighteen (18), twenty-four (24), twenty-nine (29), or thirty-six (36) months. (7-1-05)T

**05. Creditable Health Insurance**. Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental-type benefits. (7-1-05)T

**06. Co-Payment (Co-pay)**. The amount a participant is required to pay for specified services. (7-1-05)T

**07. Cost-Sharing**. A payment the participant is required to make toward the cost of their health care. (7-1-05)T

**08. Department**. The Idaho Department of Health and Welfare. (7-1-05)T

**09. Dependent**. A dependent is an unmarried child under the age of nineteen (19) years or a spouse. (7-1-05)T

**10. Employee**. Employee means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the

carrier, an employee who works between twenty (20) and thirty (32) hours per week. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. It does not include an employee who works on a part-time, temporary, and seasonal or substitute basis. (7-1-05)T

**11. Family**. Individuals related by marriage and any dependent child(ren) of either individual. An unmarried, childless individual is a family of one (1). (7-1-05)T

**12. Family Size**. The individuals counted to determine eligibility. (7-1-05)T

**13. Federal Poverty Guideline (FPG)**. Federal Poverty Guideline is a measure of income issued annually by the Department of Health and Human Services (HHS). (7-1-05)T

**14. Insurance Carrier**. An insurance company regulated by the Idaho Department of Insurance. (7-1-05)T

**15. Insurance Representative**. An Insurance Representative is the acting intermediary between the Department of Health and Welfare and the participating small business employer. (7-1-05)T

**16. Insurance Vendor**. An insurance carrier authorized to receive payments from the Department. (7-1-05)T

**17. Institution**. A facility either under the control of the Idaho Department of Corrections or a facility primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. (7-1-05)T

**18. Participant**. An individual receiving premium assistance under these rules who is employed by, or is the spouse or dependent child of someone who is employed by an Idaho Small Business. (7-1-05)T

**19. Participating Employer**. A small business employer with a signed employer agreement on file with the Department. (7-1-05)T

**20. Premium**. A regular and periodic charge or payment for health coverage. (7-1-05)T

**21. Premium Assistance**. The partial or total premium payment made to an insurance company to supplement the cost of enrolling a program participant in a health insurance plan. (7-1-05)T

**22. Renewal**. A review of all the eligibility criteria for a given participant to determine participation continuance. (7-1-05)T

**23. Slot**. A placeholder for an adult who is applying for or participating in the Access to Health Insurance program. (7-1-05)T

**24. Small Business Employer**. A Small Business Employer is a person, firm, corporation, partnership or association that is actively engaged in business that employs an average of at least two (2) but no more than fifty (50) employees during a calendar year. In determining the number of employees, companies that are affiliated companies, or are eligible to file a combined tax return for purposes of state taxation, will be considered one (1) employer. (7-1-05)T

**25. Small Group Health Plan**. A health benefit plan as defined in Title 41, Chapter 47, Idaho Code. (7-1-05)T

**26. Social Security Act**. 42 U.S.C. 101 et seq., authorizing, in part, federal grants to the states for health care assistance to eligible low-income individuals. (7-1-05)T

**27. State**. The state of Idaho. (7-1-05)T

**28. Title XIX Medicaid**. Medical assistance programs authorized under Title XIX of the Social Security Act. (7-1-05)T

**29. Title XXI State Children's Health Insurance Program (SCHIP)**. Programs authorized under Title XXI of the Social Security Act for child health insurance. (7-1-05)T

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

**100. EMPLOYER PARTICIPATION.**
A Small Business employer who wants to participate in the Access to Health Insurance program must meet each of the following conditions: (7-1-05)T

**01. Register Intent to Participate**. The Small Business employer or his insurance representative must electronically register the business' intent to participate in the program. The business is placed on a registration list ordered by the date and time stamp of the employer's registration. The business must indicate the number of program slots requested for adult applicants of the business. Placement on the employer registration list is not a guarantee of program participation. (7-1-05)T

**02. Qualify**. The business must qualify for Small Group Health Insurance coverage as defined in Title 41, Chapter 47, Idaho Code. (7-1-05)T

**03. Idaho Business**. The business must be physically located in Idaho and be actively engaged as an Idaho business. (7-1-05)T

**04. No Other Health Insurance**. The employer must not be offering health insurance to employees when the business registers its' intent to participate. (7-1-05)T

**05. Eligible Employee**. The business must have at least one (1) employee eligible for premium assistance. (7-1-05)T

**06. Employer Agreement**. The employer must have a signed program participation agreement on file with the Department. (7-1-05)T

**07. Employer Share**. The employer must pay at least fifty percent (50%) of employee's premium, or if the spouse also participates, fifty percent (50%) of the combined premium for the employee and spouse. (7-1-05)T

**101. -- 199. (RESERVED).**

**200. PARTICIPATION LIMITED.**
Participation in the Access to Health Insurance program is limited to one thousand (1000) adult participants in any calendar month. Priority for participation is ordered by the date and time stamp of the employer's registration. (7-1-05)T

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

**210. OFFER TO PARTICIPATE.**
The Department will provide written notice to an employer or his insurance representative of an offer to participate in the program when the conditions in Subsections 210.01 through 210.03 in these rules are met. *If the employer chooses to participate in the program,* ~~*T*~~*t*he insurance representative must forward the applications, as described in Sections 300 and 320 of these rules, to the Department*. Applications must be received or postmarked* within fifteen (15) calendar days of the written notice after which time the offer is void. ~~*(7-1-05)T*~~(7-1-05)T

**01. Priority Status**. The employer is in the first position on the employer registration list. (7-1-05)T

**02. Available Program Slots**. The number of available program slots is equal to or greater than the number of adult applicants indicated on the employer's registration record. (7-1-05)T

**03. Participating Employers Decline**. All participating employers have declined use of the program slot(s). (7-1-05)T

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

**220. CONDITIONAL APPROVAL.**
The Department will provide written notification of a*n* ~~*business'*~~ *employer's* conditional approval for program participation to the insurance representative *and the insurance carrier*. *If the employer chooses to participate in the program,* ~~*T*~~*t*he signed conditional approval letter must be returned to the Department with a signed employer agreement*. The documents must be received or postmarked* within fifteen (15) calendar days of the notification after which time the conditional approval is void. ~~*(7-1-05)T*~~(7-1-05)T

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

**230. FORFEIT OF REGISTRATION.**
A*n* ~~*business that*~~ *employer who allows* either ~~*voids its*~~ *his* offer to participate or ~~*its*~~ *his* conditional approval *to become void*, forfeits ~~*its*~~ *his* placement on the employer registration list. Program slots pending use by a*n* ~~*business that*~~ *employer who* forfeits ~~*its*~~ *his* registration are made available to

other employers. ~~*(7-1-05)T*~~(7-1-05)T

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

**240. NEW REGISTRATION REQUIRED.**
A*n* ~~*business that either voids its offer to participate or*~~ employer who forfeits ~~*its*~~ *his* registration must electronically re-register ~~*its*~~ *his* intent to participate in the program. The ~~*business*~~ *employer* must meet the conditions specified in Section 210 of these rules to be reconsidered for participation. ~~*(7-1-05)T*~~(7-1-05)T

**241. -- 299. (RESERVED).**

**300. APPLICATION FOR PREMIUM ASSISTANCE.**
The application must be completed and signed by the applicant or his authorized representative. By signing the application form, the signer agrees, under penalty of perjury, that statements made on the application are truthful. (7-1-05)T

**01. Application Time Limits**. Each application must be processed within sixty (60) days of postmark of application unless prevented by events beyond the Department's control. (7-1-05)T

**02. Notice**. The applicant must be sent a written notice of the outcome of his application. (7-1-05)T

**03. Insurance Representative Required**. Applications must be forwarded to the Department through the employer's insurance representative. An application received directly from an applicant will not be processed.\ (7-1-05)T

**301. -- 319. (RESERVED).**

**320. INDIVIDUAL NON-FINANCIAL ELIGIBILITY CRITERIA.**
An individual who wants to participate in the Access to Health Insurance program must meet each of the following conditions: (7-1-05)T

**01. Employer Participates**. The individual must be employed by, or be a dependent of an employee of, a participating ~~*Idaho Small Business*~~ employer. ~~*(7-1-05)T*~~(7-1-05)T

**02. Application**. The individual must submit an application through the insurance representative for premium assistance to the Department. (7-1-05)T

**03. Citizen or ~~*Eligible*~~ *Permanent Resident* Alien**. The individual must be a United States citizen or ~~*eligible*~~ *permanent resident* alien. ~~*An individual is an eligible alien if he meets the requirements of IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children".*~~ ~~*(7-1-05)T*~~(7-1-05)T

**04. Residency**. The individual must voluntarily live in Idaho and have no immediate intention of leaving. (7-1-05)T

**05. Institution**. The individual must not be a resident of an institution at the time of application or renewal. (7-1-05)T

**06. No Health Insurance**. An individual *must not have creditable health insurance at the time of application, and* must not have disenrolled from creditable health insurance in the six (6) months prior to his application with the intent to qualify for the Access to Health Insurance Program. ~~*(7-1-05)T*~~(7-1-05)T

**07. ~~*Section 1931, Social Security Act,*~~ *Title XIX Medicaid* Not Eligible**. The individual must not be eligible for ~~*health care assistance under Section 1931 of the Social Security Act*~~ *a Title XIX Medicaid Program*. ~~*(7-1-05)T*~~(7-1-05)T

**08. No Other Assistance**. The individual must not receive health care assistance through any other program funded by Title XIX or Title XXI for the same month an Access to Health Insurance premium subsidy payment is made on the participant's behalf. (7-1-05)T

**09. Proof of Insurance**. The individual must provide proof of creditable health insurance coverage for any and all dependent children under the age of nineteen (19) if premium assistance is not requested for the children. (7-1-05)T

**10. Medical Support**. An individual who is the non-custodial parent of a dependent child may satisfy a medical support order for that child by providing the child's health insurance through the Access to Health Insurance Program unless the child is found eligible for health care assistance in another home. The child will be disenrolled from the Access to Health Insurance Program and enrolled in the direct coverage program effective the first of the following month. (7-1-05)T

***11. Delinquent CHIP-B Premiums****. A child's premium payments for CHIP-B participation must not be more than sixty (60) days in arrears.* *(7-1-05)T*

**321. -- 349. (RESERVED).**

**350. FAMILY ~~*FINANCIAL ELIGIBILITY*~~ *SIZE* CRITERIA.**

**01. Individuals Counted in Family Size**. ~~*Individuals related by marriage and any dependent child(ren) of either individual are counted in the family size.*~~ *The employee, employee's spouse and any dependant children through the age of their nineteenth birthday are included in the family size, unless the individual meets one (1) of the exclusion criteria in Subsections 350.02 through 350.04 of these rules.* ~~*(7-1-05)T*~~(7-1-05)T

**02. ~~*Income Limit*~~ *SSI Recipient***. ~~*The family must have gross countable income less than or equal to one hundred and eighty-five percent (185%) of the Federal Poverty Guideline (FPG) for the family size.*~~ *Any person receiving SSI benefits must not be included.* ~~*(7-1-05)T*~~(7-1-05)T

**03. ~~*Adult's Income Counted*~~ *AABD Recipient***. ~~*Each adult's earned and unearned income is counted when determining family income. The income of a dependent child is not counted.*~~ *Any person receiving AABD benefits must not be included.* ~~*(7-1-05)T*~~(7-1-05)T

**04.** ***~~No Income Deductions~~*** ***Ineligible Non-Citizen***. *~~No deductions are applied to family countable income.~~* *Any person who has not attained permanent resident alien status must not be included.* *~~(7-1-05)T~~*(7-1-05)T

***~~05.~~*** ***~~Income Exclusions~~***. *~~Income excluded from the family countable income is defined in IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Section 385.~~* *~~(7-1-05)T~~*

**351. -- 3~~99~~54. (RESERVED).**

***355. FAMILY FINANCIAL ELIGIBILITY CRITERIA.***

***01. Income Limit***. *The gross family income must not exceed one hundred and eighty-five percent (185%) of the Federal Poverty Guideline (FPG) for the family size.* *(7-1-05)T*

***02. Adult's Income Counted***. *The earned and unearned income of each adult counted in the family size is counted when determining family income. The income of a dependent child is not counted.* *(7-1-05)T*

***03. Determining Income Eligibility for the Month of Application***. *Countable income for the application month is calculated using the requirements of IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Sections 346 through 354, 356, 370, and 372 through 385.* *(7-1-05)T*

***04. Excluded Income***. *Income that belongs to a child but is paid in the name of the parent or caretaker is excluded from the countable income determination.* *(7-1-05)T*

***05. No Income Deductions***. *No deductions are applied to family countable income.* *(7-1-05)T*

***06. Income Exclusions***. *Income excluded from the family countable income is defined in IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Section 385.* *(7-1-05)T*

***356. -- 399. (RESERVED).***

**400. CONTINUOUS ELIGIBILITY.**
Applicants found eligible in an initial determination or a*n annual* renewal remain eligible for a period of twelve (12) months *from the start date of enrollment in the health plan* unless one (1) of the following occurs: *~~(7-1-05)T~~*(7-1-05)T

**01. Incorrect Determination**. Eligibility was determined incorrectly for any reason. (7-1-05)T

**02. Death of Participant**. The participant dies. (7-1-05)T

**03. Loss of Residency**. The participant is no longer an Idaho resident. (7-1-05)T

**04. Insurance Discontinued**. The employer no longer offers health insurance or the participant drops the health insurance coverage. (7-1-05)T

**05. Employee Changes Employers**. The participant no longer works for the same small business *employer*. ~~*(7-1-05)T*~~(7-1-05)T

**06. Change of Plans**. The employer changes insurance plans. (7-1-05)T

**07. No Longer a Dependent**. A participant who is a dependent child attains the age of nineteen (19) years. (7-1-05)T

**401. -- 409. (RESERVED).**

**410. ANNUAL RENEWAL.**
Each participant's eligibility must be renewed *at least* annually. The ~~*annual*~~ renewal is a review of all eligibility factors. ~~*(7-1-05)T*~~(7-1-05)T

***01. Renewal Application Required****. Each participant must submit an annual renewal application to continue participation in the program.* *(7-1-05)T*

***02. Eligibility Criteria Must Be Met****. All eligibility criteria specified in these rules except that in Section 320.06 must be met at each renewal to continue participation in the program.* *(7-1-05)T*

***03. Interim Renewal****. The renewal may be conducted prior to the annual renewal date to coincide with a change in insurance coverage.* *(7-1-05)T*

***04. Closure of Benefits****. Failure to complete the renewal process or failure to meet eligibility criteria at renewal will result in closure of program benefits. Each participant must be notified ten (10) calendar days prior to the effective date of the action.* *(7-1-05)T*

**411. -- 449. (RESERVED)**

**450. PARTICIPATION VACANCY.**
When a program slot is vacated, the opportunity to fill the vacancy is offered first to participating employers prior to an employer on the registration list. (7-1-05)T

**451. -- 499. (RESERVED).**

**500. PARTICIPANT RIGHTS.**
The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of their rights during the application process and eligibility reviews. (7-1-05)T

**01. Right to Hearing**. Any participant can request a hearing to contest a Department decision *under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings"*. ~~*(7-1-05)T*~~(7-1-05)T

**02. Civil Rights**. Participants have civil rights under the U.S. and Idaho Constitutions, the Social Security Act, Title IV of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant parts of Federal and State laws. (7-1-05)T

**501. -- 599. (RESERVED).**

**600. PREMIUM ASSISTANCE.**
The Access to Health Insurance Program pays a premium subsidy toward a private health insurance plan for a participant. *The health insurance plan subsidized must be one regulated by Title 41, Chapter 47, Idaho Code.* The rules governing payment and benefits are found in Sections 605 through Section 620 of these rules. ~~*(7-1-05)T*~~(7-1-05)T

**601. -- 604. (RESERVED).**

**605. INSURANCE PREMIUM SUBSIDY.**
The Department or its designee will pay an insurance premium subsidy to an insurance vendor in partial payment of a premium for a qualifying health benefit plan selected by a participating employer. The Department's payment will not exceed one hundred dollars ($100) each month for each participant. The total payment for eligible children in the same family will not exceed three hundred dollars ($300) each month. The total payment for a family will not exceed five hundred dollars ($500) each month. (7-1-05)T

**606. NO SUBSIDY FOR COBRA COVERAGE.**
Premium assistance is not available for COBRA coverage. (7-1-05)T

**607. -- 614. (RESERVED).**

**615. BENEFITS AND COST-SHARING.**
Participating private health insurers must define the covered benefits and amounts of cost-sharing provided by the plan, subject to the requirements set forth in Title 41, Chapter 47, Idaho Code. Cost-sharing may include co-insurance, co-payments, deductibles, and excess premium costs above the Department's premium subsidy. (7-1-05)T

**616. -- 619. (RESERVED).**

**620. VENDOR APPLICATION.**
An insurance carrier that wants to participate in the Access to Health Insurance Program must apply to the Department and be approved for participation. The Department will confirm the vendor is an insurance carrier recognized by the Department of Insurance as having authority to sell health benefit plans regulated by Title 41, Chapter 47, Idaho Code. (7-1-05)T

**01. Conforming Benefit Plan**. The vendor must certify to the Department that the benefit plan meets the definition of a health benefit plan regulated by Title 41, Chapter 47, Idaho Code. (7-1-05)T

**02. Vendor Application Denied**. The Department will not approve the application of a vendor whose authority to sell insurance plans in the State of Idaho is suspended. (7-1-05)T

**621. -- ~~999~~*649*.(RESERVED).**

***650. VENDOR PAYMENT.***
*A vendor must prospectively invoice the Department each month for reimbursement of the premium subsidy. The Department must reimburse a vendor within thirty (30) days of receipt of the invoice for participants eligible for premium subsidy. (7-1-05)T*

***651. -- 999. (RESERVED).***

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

### DOCKET NO. 16-0319-0501 (CHAPTER REPEAL)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section 39-3505, Idaho Code.

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

**The pending rule is being adopted as proposed and is being repealed in its entirety. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 257 and 258**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no fiscal impact to the state general fund with the repeal of this chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact David Simnitt at (208) 364-1992.

DATED this 31st day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

***The Following Notice Was Published With The Temporary And Proposed Rule***

**EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-3505, Idaho Code.

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

| | | |
|---|---|---|
| **Wednesday, October 12, 2005**<br>**7:00 - 9:00 p.m.**<br>**DHW - Region I Office**<br>**1120 Ironwood Dr., Suite 102**<br>**Coeur d'Alene, ID** | **Thursday, October 13, 2005**<br>**7:00 - 9:00 p.m.**<br>**DHW - Region IV Office**<br>**1720 Westgate Dr., Suite D**<br>**Room 119**<br>**Boise, ID** | **Monday, October 17, 2005**<br>**7:00 - 9:00 p.m.**<br>**DHW - Region VI**<br>**Human Development Center**<br>**421 Memorial Dr., Room 210**<br>**Pocatello, ID** |

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

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

**This chapter of rules is being repealed to better serve Idaho's population of vulnerable adults living in certified family homes. The entire chapter of rules is being rewritten and published in this Bulletin under Docket 16-0319-0502. Legislation adopted in 2005 made this chapter of rules out of alignment with the statute changes. This chapter had requirements that were better suited for larger facilities and were not always appropriate for a certified family home serving one or two people**.

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

**These rules are being repealed as a temporary rule because of changes to statute taking effect on July 1, 2005**.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee or charge imposed or increased with the repeal of this chapter.

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

There is no fiscal impact to the state general fund with the repeal of this chapter.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was

conducted. The Notice of Negotiated Rulemaking was published in the June Idaho Administrative Bulletin, Volume 05-06 page 32.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact David Simnitt at (208) 364-1992.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 8th day of August, 2005.

**IDAPA 16.03.19 IS BEING REPEALED IN ITS ENTIRETY.**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

### DOCKET NO. 16-0319-0502 (CHAPTER REWRITE)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Section 39-3505, Idaho Code.

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

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 06-10, pages 259 through 290. Changes have been made due to comments received. The changes were made to address the concerns of providers on the environmental sanitation inspections for sewage disposal**.

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

There is no fiscal impact to the state general fund with the rewrite of this chapter.

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

These temporary rules are necessary to align rules with statute changes effective July 1, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact David Simnitt at (208) 364-1992.

DATED this 31st day of October, 2005.


Sherri Kovach
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## *The Following Notice Was Published With The Temporary And Proposed Rule*

**EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-3505, Idaho Code.

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

| | | |
|---|---|---|
| **Wednesday, October 12, 2005**<br>**7:00 - 9:00 p.m.**<br>**DHW - Region I Office**<br>**1120 Ironwood Dr., Suite 102**<br>**Coeur d'Alene, ID** | **Thursday, October 13, 2005**<br>**7:00 - 9:00 p.m.**<br>**DHW - Region IV Office**<br>**1720 Westgate Dr., Suite D**<br>**Room 119**<br>**Boise, ID** | **Monday, October 17, 2005**<br>**7:00 - 9:00 p.m.**<br>**DHW - Region VI**<br>**Human Development Center**<br>**421 Memorial Dr., Room 210**<br>**Pocatello, ID** |

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

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

**This chapter of rules is being rewritten to better serve Idaho's population of vulnerable adults living in certified family homes that provide a safe, home-like environment. The rules being repealed had requirements suited for larger facilities and were not always appropriate for a family home. The repeal of the old chapter of rules is published in this Bulletin under Docket 16-0319-0501. Legislation adopted in 2005 made statute changes for certified family homes. These rules are being adopted as temporary rules to align with the statute changes that became effective on July 1, 2005**.

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

**These temporary rules are necessary to align rules with statute changes effective July 1, 2005**.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This chapter of rules is a rewrite of existing rules, and no additional fees have been added or imposed.

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

These rules changes will not have a fiscal impact on the state general fund.

**NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June Idaho Administrative Bulletin, Vol. 05-06 page 32**.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact David Simnitt at (208) 364-1992.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 15th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**IDAPA 16**
**TITLE 03**
**CHAPTER 19**

## 16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

**000. LEGAL AUTHORITY.**
The State of Idaho Board of Health and Welfare is authorized under Sections 56-1005 and 39-3501, Idaho Code, to adopt and enforce rules and standards for Certified Family Homes.
(7-1-05)T

**001. TITLE, SCOPE AND EXCEPTIONS.**

**01. Title**. These rules are cited as IDAPA 16.03.19, "Rules Governing Certified Family Homes". (7-1-05)T

**02. Scope**. These rules set the minimum standards and administrative requirements for any home that is paid to care for an adult living in the home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs assistance with activities of daily living. (7-1-05)T

**03. Exceptions to These Rules**. These rules do not apply to the following: (7-1-05)T

**a.** Any home that provides only housing, meals, transportation, housekeeping or recreational and social activities. (7-1-05)T

**b.** Any health facility defined by Title 39, Chapter 13, Idaho Code. (7-1-05)T

**c.** Any residential care or assisted living facility defined by Title 39, Chapter 33, Idaho Code. (7-1-05)T

**d.** Any arrangement for care in a relative's home that is not compensated through a federal or state program. (7-1-05)T

**04. State Certification to Supersede Local Regulation**. These rules will supersede any program of any political subdivision of the state which certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. (7-1-05)T

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations for this chapter of rule. (7-1-05)T

**003. ADMINISTRATIVE APPEALS.**
All contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

**004. INCORPORATION BY REFERENCE.**
The Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A to Part 36 - Standards for Accessible Design, is incorporated by reference. The internet address for these guidelines is "http://www.ada.ufl.edu/ADAcd/cdpages/htm_pubs/reg3a.htm#Anchor-Appendix-52467". (7-1-05)T

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

**01. Office Hours**. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (7-1-05)T

**02. Mailing Address**. The mailing address for the business office is Idaho Department

of Health and Welfare, P.O. Box 83720, Boise, Idaho, 83720-0036. (7-1-05)T

**03. Street Address**. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho, 83702. (7-1-05)T

**04. Telephone**. The telephone number for the business office is (208) 334-5500. (7-1-05)T

**05. Internet Website**. The Department Internet Website is: http://www.healthandwelfare.idaho.gov. (7-1-05)T

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

**01. Confidential Records**. The use or disclosure of information related to Department client records covered by these rules must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209. (7-1-05)T

**02. Public Records**. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for examining and copying public records are made. Unless otherwise exempted, all public records in the custody of the Department of Health and Welfare are subject to disclosure. (7-1-05)T

**007. - 008. (RESERVED).**

**009. MANDATORY CRIMINAL HISTORY CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History Check**. The provider and all adults living in the home are required to comply with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". The resident is exempt from criminal history check requirements. (7-1-05)T

**02. When Certification Can Be Granted**. The provider must have a completed criminal history check, including clearance, prior to certification. Any other adult living in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (7-1-05)T

**03. New Adults in the Home After Certification Is Granted**. A new adult who plans to live in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," before moving into the home. Any adult who is a visitor in the home and leaves within thirty (30) days, is not required to have a criminal history check but must not have unsupervised contact with the resident. (7-1-05)T

**04. Minor Child Turns Eighteen**. A minor child turning eighteen (18) and living in the home must complete a self-declaration form, must be fingerprinted, and must not have disclosed any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory

Criminal History Check," within thirty (30) days following the month of his eighteenth birthday. (7-1-05)T

**05. Substitute Caregiver**. A substitute caregiver must complete a self-declaration form, be fingerprinted, and must not have disclosed any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," prior to any unsupervised contact with the resident. (7-1-05)T

**06. Additional Criminal Convictions**. Once criminal history clearances have been received, the provider must immediately report to the Department any additional criminal convictions for himself, any other adult living in the home or a substitute caregiver. (7-1-05)T

**07. Notice of Pending Investigations or Charges**. Once criminal history clearances have been received, the provider must immediately report to the Department when he, any other adult living in the home, or a substitute caregiver is charged with or under investigation for abuse, neglect or exploitation of any vulnerable adult or child, criminal charges, or when an adult protection or child protection complaint is substantiated. (7-1-05)T

**010. DEFINITIONS.**

**01. Abuse**. A nonaccidental act of sexual, physical or mental mistreatment or injury of the resident through the action or inaction of another individual. (7-1-05)T

**02. Activities of Daily Living**. The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, managing money, mobility, and associated tasks. (7-1-05)T

**03. Adult**. A person who has attained the age of eighteen (18) years. (7-1-05)T

**04. Alternate Caregiver**. A certified family home provider approved by the Department to care for a resident from another certified family home for up to thirty (30) consecutive days when the original provider is temporarily absent or unable to care for the resident. (7-1-05)T

**05. Assessment**. The conclusion reached using uniform criteria developed by the Department and relevant councils for determining a person's need for care and services.(7-1-05)T

**06. Certificate**. A permit issued by the Department to operate a certified family home. (7-1-05)T

**07. Certified Family Home**. A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence. (7-1-05)T

**08. Certified Family Home Care Provider**. The adult member of the certified family home living in the home who is responsible for providing care to the resident. The certified family home care provider is referred to as "the provider" in this chapter of rules. (7-1-05)T

**09. Chemical Restraint**. The use of any medication that results or is intended to result in the modification of behavior. (7-1-05)T

**10. Criminal Offense**. Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2 (o), and 18 U.S.C. Sections 1001 through 1027. (7-1-05)T

**11. Department**. The Idaho Department of Health and Welfare. (7-1-05)T

**12. Director**. The Director of the Idaho Department of Health and Welfare or his designee. (7-1-05)T

**13. Exploitation**. The misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage. (7-1-05)T

**14. Immediate Jeopardy**. An immediate or substantial danger to a resident. (7-1-05)T

**15. Incidental Supervision**. Supervision provided by an individual approved by the provider to supervise the resident, not to exceed four (4) hours per week. (7-1-05)T

**16. Level of Care**. A categorical assessment of the resident's functional ability and the degree of care required in the areas of activities of daily living, supervision, response to emergency situation, mobility, medications and behavior management. (7-1-05)T

**17. Neglect**. The failure to provide food, clothing, shelter or medical care to sustain the life and health of a resident. (7-1-05)T

**18. Negotiated Service Agreement**. The agreement between the resident and his representative, if applicable, and the home based on the assessment, physician's orders, if any, admission records, if any, and desires of the resident, that outlines services to be provided and the obligations of the home and the resident. (7-1-05)T

**19. Owner**. Any recognized legal entity, governmental unit, or person having legal ownership of the certified family home as a business operation. (7-1-05)T

**20. 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 or any other comprehensive service plan. (7-1-05)T

**21. PRN**. A medication or treatment ordered by a medical professional to an individual allowing the medication or treatment to be given as needed. (7-1-05)T

**22. Relative**. A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. (7-1-05)T

**23. Resident**. An adult who lives in a Certified Family Home and requires supervision and one (1) or more of the following services: protection, assistance with decision-making and activities of daily living, or direction toward self-care skills. (7-1-05)T

**24. Substitute Caregiver**. An individual approved by the provider to provide care and supervision to the resident in the provider's certified family home for up to thirty (30) consecutive days. (7-1-05)T

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

**100. CERTIFICATION REQUIREMENTS.**
Certification is required in order to operate a certified family home in the State of Idaho. The Department will issue a certificate to a home when all certification requirements are met. (7-1-05)T

**01. Certificate Issued in the Name of Provider**. The certificate is issued in the name of the provider applying for certification, and only to the address of the home stated in the application. A new certificate is required if the provider or the location of the certified family home changes. (7-1-05)T

**02. Accessibility to the Home**. The home, physical premises, and all records required under these rules, must be accessible at all times to the Department for the purposes of inspection, with or without prior notification. (7-1-05)T

**03. Number of Residents in the Home**. A home cannot be certified for more than two (2) residents. An exception may be granted by the Department as described in Section 140 of these rules. (7-1-05)T

**04. Certification Limitations**. (7-1-05)T

**a.** A home cannot be certified if it also provides room or board to any person who is not a resident as defined by these rules or a family member. A waiver may be granted by the Department when the individual receiving room or board is the spouse of the resident and does not require certified family home care or any higher level of care; (7-1-05)T

**b.** A home cannot be certified as a certified family home and a child foster home at the same time. (7-1-05)T

**05. Certification Study Required**. Following receipt of an acceptable application and other required documents, the Department will begin a certification study within thirty (30) days. The certification study, along with the application and other required material, will serve as the basis for issuing or denying a certificate. The study will include the following: (7-1-05)T

**a.** A review of all material submitted; (7-1-05)T

**b.** A scheduled home inspection; (7-1-05)T

**c.** An interview with the proposed provider; (7-1-05)T

**d.** An interview with provider's family, if necessary; (7-1-05)T

**e.** A review of the number, age, and sex of children or other adults in the home to evaluate the appropriateness of a placement to meet the needs of the resident; (7-1-05)T

**f.** A medical or psychological examination of the provider or family members, if the Department determines it is necessary; and (7-1-05)T

**g.** Other information necessary to verify that the home is in compliance with these rules. (7-1-05)T

**06. Provider Training Requirements**. As a condition of initial certification, all providers must receive training in the following areas: (7-1-05)T

**a.** Resident rights; (7-1-05)T

**b.** Certification in first aid and Cardio-Pulmonary Resuscitation (CPR) which must be kept current; (7-1-05)T

**c.** Emergency procedures; (7-1-05)T

**d.** Fire safety, fire extinguishers, and smoke alarms; (7-1-05)T

**e.** Completion of approved "Assistance with Medications" course; and (7-1-05)T

**f.** Complaint investigations and inspection procedures. (7-1-05)T

**07. Effect of Previous Revocation or Denial of Certificate or License**. The Department is not required to consider the application of any applicant who has had a health care certificate or license denied or revoked until five (5) years have elapsed from the date of denial or revocation according to Section 39-3525, Idaho Code. (7-1-05)T

**101. APPLICATION FOR CERTIFICATION.**
The applicant must apply for certification on forms provided by the Department, and must provide information required by the Department. (7-1-05)T

**01. Completed and Signed Application**. A completed application form signed by the applicant. (7-1-05)T

**02. Statement to Comply**. A written statement that the applicant has thoroughly read and reviewed this chapter and is prepared to comply with all of its provisions. (7-1-05)T

**03. Criminal History and Background Clearance**. Satisfactory evidence that the applicant and all adults living in the home are of reputable and responsible character, including a criminal history clearance as provided in Section 009 of these rules. (7-1-05)T

**04. 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 care provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. (7-1-05)T

**05. Electrical Inspection**. A current statement from a licensed electrician or the local/ state electrical inspector that all wiring in the home complies with applicable local code. (7-1-05)T

**06. Environmental Sanitation Inspection**. If the home is not on a municipal water supply or sewage disposal system, a current statement *is needed* from the local environmental health agency ~~*or, if not available, a current statement from a person in the business of servicing these systems,*~~ that the water supply and sewage disposal system meet the legal standards. *If the local environmental health agency cannot provide this information, the home must obtain a statement to that effect. In addition, the applicant must provide a signed statement that the water supply and sewage disposal system are in good working order.* ~~*(7-1-05)T*~~(7-1-05)T

**07. Proof of Insurance**. Proof of homeowner's or renter's insurance on the home and the resident's belongings. For continued certification, insurance must be kept current. (7-1-05)T

**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. (7-1-05)T

**09. Other Information as Requested**. Other information that may be requested by the Department for the proper administration and enforcement of the provisions of this chapter. (7-1-05)T

**10. Termination of Application Process**. Failure of the applicant to cooperate with the Department in the application process will result in the termination of the application process. Failure to cooperate means that the information described in Section 101 of these rules is not provided in a timely manner, or not provided in the form requested by the Department, or both. (7-1-05)T

**102. -- 109. (RESERVED).**

**110. ISSUANCE OF CERTIFICATE.**

**01. Certificate**. A certificate is valid for no more than twelve (12) months from the date of approval. The certificate will expire at the end of the stated period unless it is continued in effect by the Department as provided in Subsection 110.03.c. of these rules. (7-1-05)T

**a.** The initial certificate requires a home inspection by the Department. (7-1-05)T

**b.** The certificate is valid only for the location and person named in the application and is not transferable or assignable; (7-1-05)T

**c.** The certificate must be available at the home on request. (7-1-05)T

**02. Provisional Certificate**. A provisional certificate may be issued to a home that is not in substantial compliance with these rules if the deficiencies do not adversely affect the health or safety of the resident. (7-1-05)T

**a.** Provisional certificates may be issued for up to six (6) months and are contingent on an approved plan to correct all deficiencies prior to expiration of the provisional certificate. (7-1-05)T

**b.** A provisional certificate may be replaced with a certificate when the Department has revisited the home prior to the expiration of the provisional certificate and has determined that the home qualifies for a certificate. (7-1-05)T

**c.** A home will not be issued more than one (1) provisional certificate in any twelve (12) month period. (7-1-05)T

**03. Renewal of Certificate**. To renew the certificate, the provider must submit a written request on a form provided by the Department. The completed renewal application form and any required documentation must be returned to the Department at least thirty (30) days prior to the expiration of the existing certificate. (7-1-05)T

**a.** A home inspection is required the year after the initial home certification study and at least every twenty-four (24) months thereafter. (7-1-05)T

**b.** If the Department determines a home inspection is not required to renew the certificate, the provider must submit the renewal application and copies of the following documentation to renew the certificate: (7-1-05)T

i. Current first aid and CPR cards; (7-1-05)T

ii. Furnace, well, and fireplace inspection reports, as applicable; (7-1-05)T

iii. Annual fire extinguisher inspection reports or sales receipts for fire extinguishers less than twelve (12) months old; (7-1-05)T

iv. Fire log of smoke detector checks, fire extinguisher checks, and fire drill and evacuation summaries; (7-1-05)T

v. Training logs; (7-1-05)T

vi. List of individuals currently living in the home and individuals who moved in and out of the home during the year; (7-1-05)T

vii. Proof of home owner's or renter's insurance; (7-1-05)T

viii. Request for waiver or renewal of waiver and meets the requirements in Section 120 of these rules; and (7-1-05)T

ix. Other information as requested by the Department. (7-1-05)T

**c.** The existing certificate, unless suspended or revoked, remains valid until the Department has acted on the application renewal when the renewal application and supporting documentation is filed in a timely manner. (7-1-05)T

**04. Change of Ownership Certification Requirements**. Certificates are not transferable from one (1) individual to another or from one (1) location to another. The home must be recertified using the same procedure as a new home that has never been certified when a change of ownership, lease, or location occurs. (7-1-05)T

**05. Denial of Certificate**. The Department may deny the issuance of a certificate when conditions exist that endanger the health, safety, or welfare of any resident or when the home is not in substantial compliance with these rules. Additional causes for denial of a certificate include the following: (7-1-05)T

**a.** The applicant or provider has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (7-1-05)T

**b.** The applicant or provider has been convicted of fraud, gross negligence, abuse, assault, battery or exploitation; (7-1-05)T

**c.** The applicant has been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or similar minor offense; (7-1-05)T

**d.** The applicant or provider has been denied or has had revoked any health facility, residential care or assisted living facility license, or certified family home certificate; (7-1-05)T

**e.** The applicant or provider has been convicted of operating a health facility, residential care or assisted living facility, or certified family home without a license or certificate; (7-1-05)T

**f.** A court has ordered that the applicant or provider must not operate a health facility, residential care or assisted living facility, or certified family home; (7-1-05)T

**g.** The applicant or provider is listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; or (7-1-05)T

**h.** The applicant or provider is directly under the control or influence of any person who is described in Subsections 110.05.a. through 110.05.g. of these rules. (7-1-05)T

**06. Revocation of Certificate**. The Department may revoke any certificate when conditions exist which endanger the health, safety, or welfare of any resident, or when the home is not in substantial compliance with these rules as described in Section 913 of these rules. (7-1-05)T

**07. Procedure for Appeal of Denial or Revocation of a Certificate**. (7-1-05)T

**a.** Immediately upon denial of any application for a certificate, or revocation of a certificate, the Department will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. (7-1-05)T

**b.** The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

**08. Family Home Operating Without a Certificate**. A person found to be operating a family home without first obtaining a certificate may be referred for criminal prosecution. Upon discovery of a family home operating without a certificate, the Department will refer residents to the appropriate placement or adult protective services agency if: (7-1-05)T

**a.** There is an immediate threat to any resident's health and safety; or (7-1-05)T

**b.** The home does not cooperate with the Department to apply for certification, meet certification standards and obtain a valid certificate. (7-1-05)T

**111. -- 114. (RESERVED).**

**115. REQUIRED ONGOING TRAINING.**
All providers must document a minimum of eight (8) hours per year of ongoing, relevant training in the provision of supervision, services, and care. The training must consist of at least four (4) hours of classroom training. The remaining four (4) hours may be independent study or classroom training. Up to two (2) hours of ongoing first aid or CPR will count toward the eight (8) hour requirement. The initial provider training required in Subsection 100.06 of these rules will count toward the first year's eight (8) hour training requirement. (7-1-05)T

**116. -- 119. (RESERVED).**

**120. WAIVERS.**
The Department may grant waivers. The decision to grant a waiver in one (1) home is not a precedent or applicable to any other home. (7-1-05)T

**01. Written Request**. A written request for a waiver must be submitted to the Department. The request must include the following: (7-1-05)T

**a.** Reference to the section of the rules for which the waiver is requested; (7-1-05)T

**b.** Reasons that show good cause why the waiver should be granted, including any extenuating circumstances and any compensating factors or conditions that may have bearing on the waiver, such as additional floor space or additional staffing; (7-1-05)T

**c.** Written documentation that assures resident health and safety will not be jeopardized if the waiver is granted. (7-1-05)T

**02. Waiver Expiration**. A waiver may be granted for a period of no more than twelve (12) months. (7-1-05)T

**03. Waiver Renewal**. If the provider wishes to renew a waiver, he must submit a written request to the Department. The appropriateness of renewing a waiver will be determined by the Department. (7-1-05)T

**04. Waiver Not Transferable**. A waiver granted under Section 120 is not transferable to any other provider, address, or resident. (7-1-05)T

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

**130. NURSING FACILITY LEVEL OF CARE WAIVER REQUIREMENTS.**
A home may care for one (1) resident who requires nursing facility level of care without obtaining a waiver. A home seeking to provide care to two (2) residents who require nursing facility level of care must request a waiver in writing from the Department as required in Section 39-3554, Idaho Code. (7-1-05)T

**01. Conditions for a Waiver**. The Department will issue a written waiver permitting the arrangement when: (7-1-05)T

**a.** Each of the residents provides a written statement to the Department requesting the arrangement; (7-1-05)T

**b.** Each of the residents making the request is competent, informed, and has not been coerced; (7-1-05)T

**c.** The Department finds the arrangement safe and effective. (7-1-05)T

**02. Revoking a Waiver**. The Department will revoke the waiver when: (7-1-05)T

**a.** There is a threat to the life or safety of either resident; (7-1-05)T

**b.** One (1) of the residents leaves the home permanently; (7-1-05)T

**c.** One (1) of the residents notifies the Department in writing that he does not wish to live in the home with the other resident; or (7-1-05)T

**d.** The Department finds the arrangement is no longer safe and effective. (7-1-05)T

**03. Waiver Not Transferable**. A waiver granted under Section 130 is not transferable to any other provider, address, or resident. (7-1-05)T

**131. -- 139. (RESERVED).**

**140. EXCEPTION TO THE TWO RESIDENT LIMIT.**

**01. Application for Exception**. A home may apply to the Department for an exception to the two (2) resident limit to care for three (3) or four (4) residents. (7-1-05)T

**02. Criteria for Determination**. The Department will determine if safe and appropriate care can be provided based on resident needs. The Department will consider, at a minimum, the following factors in making its determination: (7-1-05)T

**a.** Each current or prospective resident's physical, mental and behavioral status and

history; (7-1-05)T

**b.** The household composition including the number of adults, children and other family members requiring care from the provider; (7-1-05)T

**c.** The training, education, and experience of the provider to meet each resident's needs; (7-1-05)T

**d.** Potential barriers that might limit resident safe access to and exit from the rooms in the home; (7-1-05)T

**e.** The number and qualifications of care givers in the home; (7-1-05)T

**f.** The desires of the prospective and current residents; (7-1-05)T

**g.** The individual and collective hours of care needed by the residents; (7-1-05)T

**h.** The physical layout of the home and the square footage available to meet the needs of all persons living in the home; and (7-1-05)T

**i.** If an exception to the two (2) resident limit would result in two (2) or more residents who require nursing facility level of care living in the home, then the application must also include the information required in Section 130 of these rules. (7-1-05)T

**03. Other Employment**. Providers of three (3) or four (4) bed homes must not have other gainful employment unless: (7-1-05)T

**a.** The total direct care time for all residents, as reflected by the plan of service and assessments, does not exceed eight (8) hours per day; (7-1-05)T

**b.** The provider is immediately available to meet resident needs as they arise; and (7-1-05)T

**c.** Each resident is supervised at all times unless the assessment or plan of service indicates the resident may be left unattended for designated periods of time. (7-1-05)T

**04. Additional Training**. Providers of three (3) or four (4) bed homes must obtain additional training to meet the needs of the residents as determined necessary by the Department. (7-1-05)T

**05. Guardianship**. A provider applying to care for three (3) or four (4) residents may not be the guardian of any resident unless either of the following applies: (7-1-05)T

**a.** The guardianship was established prior to July 1, 2001; or (7-1-05)T

**b.** The proposed guardian is a parent, child, sibling, or grandparent of the resident. (7-1-05)T

**06. Exception Nontransferable**. An exception to care for more than two (2) residents will not be transferable to another provider, address, or resident. (7-1-05)T

**07. Reassessment of Exception**. An exception to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: (7-1-05)T

**a.** Each time a new admission is considered; or (7-1-05)T

**b.** When there is a significant change in any of the factors specified in Subsection 140.02 of these rules. (7-1-05)T

**08. Annual Home Inspection**. A home with an exception to care for more than two (2) residents must have a home inspection at least annually. (7-1-05)T

**09. Shared Sleeping Rooms**. In addition to the requirements in Section 700 of these rules, no more than two (2) residents will be housed in any multi-bed sleeping room. (7-1-05)T

**141. -- 149. (RESERVED).**

**150. INSPECTIONS OF HOMES.**
The Department will inspect certified family homes at least every twenty-four (24) months, beginning with the first month of the most recent certification. Inspections may occur more frequently as the Department deems necessary. The Department may consider the results of previous inspections, history of compliance with rules, and complaints to determine the frequency of inspections. (7-1-05)T

**01. Notice of Inspection**. All inspections and investigations, except for the initial certification study, may be made unannounced and without prior notice. (7-1-05)T

**02. Inspection by Department or Its Agent**. The Department may use the services of any legally qualified person or organization, either public or private, to examine and inspect any home requesting certification. (7-1-05)T

**03. Access by Inspector**. An inspector must have full access and authority to examine quality of care and services delivery, resident records, records including any records or documents pertaining to any financial transactions between residents and the home, resident accounts, physical premises, including the condition of the home, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with these rules and standards. (7-1-05)T

**a.** An inspector has the authority to interview the provider, any adults living in the home, the resident and the resident's family. Interviews with residents will be confidential and conducted privately unless otherwise specified by the resident. (7-1-05)T

**b.** The inspector has full authority to inspect the entire home, accompanied by the provider, including personal living quarters of family members living in the home, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on the operation of the certified family home. (7-1-05)T

**04. Written Report**. Following any investigation or inspection, the Department will provide a written report to the provider of the home within thirty (30) days. The report will include the findings of the investigation or inspection. (7-1-05)T

**05. Plan of Correction**. If deficiencies are identified during the investigation or inspection, the home will be sent a statement of deficiencies which requires a plan of correction. (7-1-05)T

**a.** Depending on the severity of the deficiency, the home may be given up to fourteen (14) calendar days to develop a written plan of correction and to return the plan of correction to the Department. (7-1-05)T

**b.** An acceptable plan of correction must include how the deficiency was corrected or how it will be corrected, what steps have been taken to assure that the deficiency does not recur, and acceptable time frames for correction of the deficiency. (7-1-05)T

**c.** Follow-up inspections may be conducted to determine whether corrections to deficiencies are being made according to time frames established in the plan of correction. (7-1-05)T

**d.** The Department may provide consulting services to a home, upon request, to assist in identifying and correcting deficiencies and upgrading the quality of care. (7-1-05)T

**151. -- 159. (RESERVED).**

**160. COMPLAINT PROCEDURE.**
Any person who believes that any rule has been violated by a home may file a complaint with the Department at the address listed in Section 005 of these rules or at the Department's Regional Office. (7-1-05)T

**01. Investigation**. The Department will investigate any complaint alleging a violation of these rules. Any complaint involving the abuse, neglect, or exploitation of an adult must also be referred to adult protective services in accordance with the Adult Abuse, Neglect, and Exploitation Act, Section 39-5303, Idaho Code. (7-1-05)T

**02. Investigation Method**. The nature of the complaint will determine the method used to investigate the complaint. On-site investigations at the home may be unannounced. (7-1-05)T

**03. Statement of Deficiencies**. If violations of these rules are identified, depending on the severity, the Department may send the home a statement of deficiencies. The home must prepare a plan of correction as described in Subsection 150.05 of these rules, and return it to the Department within the time frame designated by the Department. (7-1-05)T

**04. Public Disclosure**. Information received by the Department through filed reports, inspection, or as otherwise authorized under the law, must not be disclosed publicly in such a manner as to identify individual residents except in a proceeding involving a question of

certification. (7-1-05)T

**05. List of Deficiencies**. A current list of deficiencies including plans of correction will be available to the public upon request in the individual homes or by written request to the Department. (7-1-05)T

**161. -- 169. (RESERVED).**

**170. ELEMENTS OF CARE.**
As a condition of certification, the home must provide each of the following to the resident without additional charge. (7-1-05)T

**01. Supervision**. Appropriate, adequate supervision for twenty-four (24) hours each day unless the resident's plan of service provides for alone time. (7-1-05)T

**02. Daily Activities and Recreation**. Daily activities, recreational activities, maintenance of self-help skills, assistance with activities of daily living and provisions for trips to social functions, special diets, and arrangements for payments. (7-1-05)T

**03. Medical**. Arrangements for medical and dental services and monitoring of medications. If the resident is unable to give medical consent, the provider will give the name and contact information of the person holding guardianship or power of attorney for health care to any health care provider upon request. (7-1-05)T

**04. Furnishings and Equipment**. Linens, towels, wash cloths, a reasonable supply of soap, shampoo, toilet paper, sanitary napkins or tampons, first aid supplies, shaving supplies, laundering of linens, housekeeping service, maintenance, and basic television in common areas. In addition, the following will apply: (7-1-05)T

**a.** Resident living rooms must contain reading lamps, tables, and comfortable chairs or sofas; (7-1-05)T

**b.** The resident must be provided with his own bed which must be at least thirty-six (36) inches wide, substantially constructed, and in good repair. Roll-away type beds, cots, folding beds, or double bunks must not be used. The bed must be provided with springs which are in good repair, a clean and comfortable mattress which is standard for the bed, and a pillow; (7-1-05)T

**c.** The resident sleeping room must be equipped with a chair and dresser, substantially constructed and in good repair; (7-1-05)T

**d.** On request, each sleeping room must be equipped with a lockable storage cabinet for personal items for each resident, in addition to the required storage in resident sleeping rooms; (7-1-05)T

**e.** Adequate and satisfactory equipment and supplies must be provided to serve the residents. The amount and kind will vary according to the size of the home and type of resident; and (7-1-05)T

**f.** A monitoring or communication system must be provided when necessary due to the size or design of the home. (7-1-05)T

**05. Plan of Service**. Development and implementation of the plan of service for private-pay residents and implementation of the plan of service for state-funded residents. (7-1-05)T

**06. Activity Supplies**. Activity supplies in reasonable amounts, that reflect the interests of the resident. (7-1-05)T

**07. Transportation**. Arrangement of transportation in reasonable amounts to community, recreational and religious activities within twenty-five (25) miles of the home. The home must also arrange for emergency transportation. (7-1-05)T

**171. -- 174. (RESERVED).**

**175. ROOM, UTILITIES AND MEALS.**
The home must provide room, utilities and three (3) daily meals to the resident. The charge for room, utilities and three (3) daily meals must be established in the admission agreement. (7-1-05)T

**176. -- 199. (RESERVED)**

**200. RESIDENT RIGHTS POLICY.**
Each certified family home will develop and implement a written resident rights policy which will protect and promote the rights of each resident. The written description of legal rights must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department at the address in Section 005 of these rules, or local Regional Office regarding resident abuse and neglect and misappropriation of resident property in the home. Resident rights include the following: (7-1-05)T

**01. Privacy**. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits and meetings of family and resident groups, including: (7-1-05)T

**a.** The right to send and receive mail unopened; (7-1-05)T

**b.** If the resident is married, privacy for visits by his spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the attending physician. (7-1-05)T

**02. Humane Care**. Each resident has the right to humane care and a humane environment, including the following: (7-1-05)T

**a.** The right to a diet which is consistent with any religious or health-related restrictions; (7-1-05)T

**b.** The right to refuse a restricted diet; and (7-1-05)T

**c.** The right to a safe and sanitary living environment. (7-1-05)T

**03. Respectful Treatment**. Each resident has the right to be treated with dignity and respect, including: (7-1-05)T

**a.** The right to be treated in a courteous manner by the provider; (7-1-05)T

**b.** The right to receive a response from the home to any request of the resident within a reasonable time; (7-1-05)T

**c.** Freedom from discrimination; and (7-1-05)T

**d.** Freedom from intimidation, manipulation, coercion, and exploitation. (7-1-05)T

**e.** The right to wear his own clothing. (7-1-05)T

**f.** The right to determine his own dress and hair style; (7-1-05)T

**04. Basic Needs Allowance**. Residents whose care is paid for by public assistance must retain, for their personal use, the difference between their total income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," Section 513. (7-1-05)T

**05. Resident Funds**. Residents have the right to manage their personal funds. A home must not require a resident to deposit his personal funds with the home. (7-1-05)T

**06. Access to Resident**. Each home must permit immediate access to any resident by any representative of the Department, by the state Ombudsman for the elderly or his designees, by an adult protection investigator or by the resident's personal physician. Each home must also permit the following: (7-1-05)T

**a.** Immediate access to a resident by immediate family or other relatives, subject to the resident's right to deny or withdraw consent at any time; (7-1-05)T

**b.** Immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time; (7-1-05)T

**c.** Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (7-1-05)T

**07. Freedom From Harm**. The resident has the right to be free from physical, mental, or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline. (7-1-05)T

**a.** A certified family provider who has reasonable cause to believe that a vulnerable

adult is being or has been abused, neglected, or exploited must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. (7-1-05)T

**b.** The home must report within four (4) hours to the appropriate law enforcement agency when there is reasonable cause to believe that abuse, neglect, misappropriation of resident's property, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult resident according to Sections 39-5303 and 39-5310, Idaho Code. (7-1-05)T

**08. Health Services**. The resident has the right to control his health-related services, including: (7-1-05)T

**a.** The right to retain the services of his own personal physician and dentist; (7-1-05)T

**b.** The right to select the pharmacy or pharmacist of his choice; (7-1-05)T

**c.** The right to confidentiality and privacy concerning his medical or dental condition and treatment; (7-1-05)T

**d.** The right to participate in the formulation of his plan of service. (7-1-05)T

**09. Grievance**. The resident has the right to voice or file a grievance with respect to care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by the home to resolve grievances the resident may have, including those with respect to the behavior of other residents. (7-1-05)T

**10. Advance Notice**. The resident must receive written advance notice at least fifteen (15) calendar days prior to his non-emergency transfer or discharge unless he is transferred or discharged only for medical reasons, or for his welfare or the welfare of other residents, or for nonpayment for his stay. The written advance notice can be up to thirty (30) days if agreed to in the admission agreement. (7-1-05)T

**11. Other Rights**. In addition to the rights outlined in Subsections 200.01 through 200.10 of these rules, the resident has the following rights: (7-1-05)T

**a.** The resident has the right to refuse to perform services for the home; (7-1-05)T

**b.** The resident must have access to his personal records and must have the right to confidentiality of personal and clinical records; (7-1-05)T

**c.** The resident has the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others; (7-1-05)T

**d.** The resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the home; (7-1-05)T

**e.** The resident has the right to examine, upon reasonable request, the results of the most recent inspection of the home conducted by the Department with respect to the home and any plan of correction in effect with respect to the home; (7-1-05)T

**f.** The resident has a right to review a list of other certified family homes that may be available to meet his needs in case of transfer; (7-1-05)T

**g.** The resident has the right not to be required to receive routine care of a personal nature from a member of the opposite sex; (7-1-05)T

**h.** The resident has the right to be informed, in writing, regarding the formulation of advance directives as described in Title 39, Chapter 45, Idaho Code; and (7-1-05)T

**i.** The resident must have any other right established by law. (7-1-05)T

**201. NOTICE OF LEGAL RIGHTS.**
The certified family home will inform the resident, verbally and in writing, at the time of admission to the home, of his legal rights during the stay at the home. (7-1-05)T

**202. ACCESS BY ADVOCATES AND REPRESENTATIVES.**
A certified family home must permit advocates and representatives of community and legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the home at reasonable times. Advocates and representatives may observe all common areas of the home. Access must be permitted in order for advocates and representatives to provide the following. (7-1-05)T

**01. Inform Residents of Services**. Visit, talk with and make personal, social service programs and legal services available to all residents. (7-1-05)T

**02. Inform Residents of Rights**. Inform residents of their rights and entitlements, their corresponding obligations under state, federal, and local laws by distribution of educational materials or discussion in groups and with individuals. (7-1-05)T

**03. Assist Residents to Secure Rights**. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in other matters in which residents are aggrieved. This assistance may be provided individually, or in a group basis, and may include organizational activity, counseling, and litigation. (7-1-05)T

**04. Advise and Represent**. Engage in other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights. (7-1-05)T

**05. Communicate Privately**. Communicate privately and without restrictions with any resident who consents to the communication. (7-1-05)T

**203 -- 224. (RESERVED)**

**225. UNIFORM ASSESSMENT REQUIREMENTS.**

**01. State Responsibility for State-Funded Residents**. The Department will assess State-funded residents according to IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients". (7-1-05)T

**02. Provider Responsibility for Private-Pay Residents**. The provider will develop, identify, assess, or direct a uniform needs assessment of private-pay residents. The Department's Uniform Assessment Instrument may be used as the uniform needs assessment as described in IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients". (7-1-05)T

**03. Results of Assessment**. The results of the assessment may be used to evaluate the ability of a provider to meet the identified resident's needs. The results of the assessment may also be used to determine the need for special training or licenses or certificates that may be required to care for certain residents. (7-1-05)T

**04. Uniform Needs Assessment for Private-Pay**. The uniform needs assessment used by the home for private-pay residents must include: (7-1-05)T

**a.** Identification and background information; (7-1-05)T

**b.** Medical diagnosis; (7-1-05)T

**c.** Medical and health problems; (7-1-05)T

**d.** Prescription and over-the-counter medications; (7-1-05)T

**e.** Behavior patterns; (7-1-05)T

**f.** Cognitive function; (7-1-05)T

**g.** The psychosocial and physical needs of the resident; (7-1-05)T

**h.** Functional status; and (7-1-05)T

**i.** Assessed level of care. (7-1-05)T

**05. Time Frames for Completing the Uniform Needs Assessment for Private-Pay Residents**. The assessment must be completed no later than fourteen (14) calendar days after admission. The assessment must be reviewed when there is a change in need, or every twelve (12) months, whichever comes first. Upon request, the Department may provide training in conducting a uniform needs assessment. (7-1-05)T

**226 - 249. (RESERVED).**

**250. PLAN OF SERVICE.**
The resident must have a plan of service. The plan must identify the resident, describe the services to be provided, and describe how the services will be delivered. (7-1-05)T

**01.** **Core Elements**. A resident's plan of service will be based on: (7-1-05)T

**a.** Assessment; (7-1-05)T

**b.** Service needs for activities of daily living; (7-1-05)T

**c.** Need for limited nursing services; (7-1-05)T

**d.** Need for medication assistance; (7-1-05)T

**e.** Frequency of needed services; (7-1-05)T

**f.** Level of assistance; (7-1-05)T

**g.** Habilitation and training needs; (7-1-05)T

**h.** Behavioral management needs, including identification of situations that trigger inappropriate behavior; (7-1-05)T

**i.** Physician's dated history and physical; (7-1-05)T

**j.** Admission records; (7-1-05)T

**k.** Community support systems; (7-1-05)T

**l.** Resident's desires; (7-1-05)T

**m.** Transfer and discharge requirement; and (7-1-05)T

**n.** Other identified needs. (7-1-05)T

**02.** **Signature and Approval**. The provider and the resident, his legal guardian or his conservator must sign and date the plan of service upon its completion, within fourteen (14) days after the resident's admission. For homes serving state-funded residents, services must be authorized by the Department prior to admission. (7-1-05)T

**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. (7-1-05)T

**04.** **Resident Choice**. A resident must be given the choice and control of how and what services the provider or external vendors will provide to the extent the resident can make choices. (7-1-05)T

**05.** **Copy of the Plan**. Signed copies of the plan of service must be placed in the resident's file, given to the resident, and given to his legal guardian or his conservator no later than fourteen (14) days after admission. A copy of the Department approved plan must be in the resident's file, if applicable. (7-1-05)T

**06. Changes to the Plan**. A record must be made of any changes to the plan or when the provider is unable to provide services outlined in the plan of service. (7-1-05)T

**07. Periodic Review**. The next scheduled date of review must be documented in the plan of service. The plan of service should be reviewed as necessary but must be reviewed at least every twelve (12) months. (7-1-05)T

**251 - 259. (RESERVED).**

**260. ADMISSIONS.**

**01. Admission Agreement**. At the time of admission to a certified family home, the provider and the resident must enter into an admission agreement. The agreement will be in writing and must be signed by both parties. The agreement must, in itself or by reference to the resident's plan of care, include at least the following: (7-1-05)T

**a.** Whether or not the resident will assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis; (7-1-05)T

**b.** Whether or not the resident has ongoing ability to safeguard himself against personal harm, injury or accident. The certified family home must have a plan in place for steps it will take if the resident is not able to carry out his own self-preservation. (7-1-05)T

**c.** Whether or not the provider will accept responsibility for the resident's funds; (7-1-05)T

**d.** How a partial month's refund will be managed; (7-1-05)T

**e.** Responsibility for valuables belonging to the resident and provision for the return of a resident's valuables should the resident leave the home; (7-1-05)T

**f.** Amount of liability coverage provided by the homeowner's or renter's insurance policy. (7-1-05)T

**g.** Fifteen (15) calendar days' written notice or up to thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party; (7-1-05)T

**h.** Conditions under which emergency transfers will be made; (7-1-05)T

**i.** Signed permission to transfer pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home; (7-1-05)T

**j.** Responsibility to obtain consent for medical procedures including the name, address, phone of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions. (7-1-05)T

**k.** Resident responsibilities as appropriate; (7-1-05)T

**l.** Amount the home will charge for room, utilities and three (3) daily meals; and (7-1-05)T

**m.** Other information as needed. (7-1-05)T

**02. Termination of Admission Agreement**. The admission agreement must not be terminated except under the following conditions: (7-1-05)T

**a.** By written notification by either party giving the other party fifteen (15) calendar days' written notice or as agreed to in the Admission Agreement but not to exceed thirty (30) days; (7-1-05)T

**b.** The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be provided in a certified family home; (7-1-05)T

**c.** Nonpayment of the resident's bill; (7-1-05)T

**d.** Emergency conditions requiring a resident to transfer out of the home without fifteen (15) calendar days' written notice to protect the resident or other residents in the home from harm; and (7-1-05)T

**e.** Other written conditions as mutually established between the resident and the provider at the time of admission. (7-1-05)T

**261. -- 269. (RESERVED).**

**270. RESIDENT RECORDS.**

**01. Admission Records**. Records required for admission to a home must be maintained and updated and must be kept confidential. Their availability without the consent of the resident, subject to IDAPA 16.05.01, "Use and Disclosure of Department Records," is limited to the home, professional consultants, the resident's physician and representatives of the Department. All entries must be kept current, recorded legibly in ink, dated, signed, and must include: (7-1-05)T

**a.** Name; (7-1-05)T

**b.** Permanent address if other than the home; (7-1-05)T

**c.** Marital status and sex; (7-1-05)T

**d.** Birth place and date of birth; (7-1-05)T

**e.** The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; (7-1-05)T

**f.** Personal physician and dentist; (7-1-05)T

**g.** Admission date and name of person who completed admission form; (7-1-05)T

**h.** Results of a history and physical performed by a licensed physician or nurse practitioner within six (6) months prior to admission; (7-1-05)T

**i.** For private-pay residents, the history and physical should include a description of the resident's needs for personal assistance and supervision, and indicate that the resident is appropriate for placement in a home; (7-1-05)T

**j.** A list of medications, treatments, and special diets, if any, prescribed for the resident and signed and dated by the physician; (7-1-05)T

**k.** Religious affiliation if resident chooses to disclose; (7-1-05)T

**l.** Interested relatives and friends other than those outlined in Subsection 270.01.e. of these rules, to include names, addresses, and telephone numbers of family members, legal guardian or conservator, or significant others, or all; (7-1-05)T

**m.** Social information, obtained by the home from the resident, family, service coordinator, legal guardian or conservator, or other knowledgeable individuals. The information must include the resident's social history, hobbies, and interests; (7-1-05)T

**n.** Written admission agreement which is signed and dated by the provider and the resident, his legal guardian or his conservator; (7-1-05)T

**o.** A signed copy of the resident's rights as specified in Section 200 of these rules, or documentation that the resident, his legal guardian, or his conservator has read and understands his rights as a resident of the home; (7-1-05)T

**p.** A copy of the resident's most current uniform needs assessment for the certified family home; (7-1-05)T

**q.** A copy of the signed and dated admission plan of service that contains all elements of a plan of service between the resident, his legal guardian, or his conservator and the home; (7-1-05)T

**r.** An inventory of the resident's belongings. The resident can inventory any item he chooses; (7-1-05)T

**s.** Information about any specific health problems of the resident which may be useful in a medical emergency; and (7-1-05)T

**t.** Any other health-related, emergency, or pertinent information which the resident requests the home to keep on record. (7-1-05)T

**02. Ongoing Resident Records**. Records must be kept current, including: (7-1-05)T

**a.** Admission information required in Subsection 270.01 of these rules; (7-1-05)T

**b.** A current list of medications, diet, and treatments prescribed for the resident which is signed and dated by the physician giving the order. Current orders may be a copy of the signed doctor's order from the pharmacy; (7-1-05)T

**c.** Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. All PRN medication must be documented with the reason for taking the medication; (7-1-05)T

**d.** Any incident or accident occurring while the resident is living in the home; (7-1-05)T

**e.** Notes from the licensed nurse, home health, physical therapy, and other service providers, documenting the services provided at each visit; (7-1-05)T

**f.** Documentation of significant changes in the residents' physical, mental status, or both and the home's response; (7-1-05)T

**g.** If appropriate, the resident's financial accounting records; (7-1-05)T

**h.** The resident's uniform needs assessment, to include the admission assessment and all assessments for the past year, for certified family home care; (7-1-05)T

**i.** Signed and dated plan of service, to include the admission plan of service and all service agreements for the past year between the resident, his legal guardian, or his conservator and the home; (7-1-05)T

**j.** Contact name, address, phone number of individuals or agencies providing paid supports; (7-1-05)T

**k.** Signed copies of all care plans that are prepared by all outside service providers; and (7-1-05)T

**l.** An inventory of resident’s belongings. The resident can inventory any item he chooses. The inventory can be updated at any time but must be updated annually. (7-1-05)T

**03. Maintenance of Resident Records**. All records of services delivered by the provider must be maintained in the home for at least five (5) years from the date of service. (7-1-05)T

**271. -- 274. (RESERVED).**

**275. RESIDENT FUNDS AND FINANCIAL RECORDS.**

**01. Resident Funds Policy**. If a resident's funds are turned over to the provider for any

purpose other than payment for services allowed under these rules, or if the provider or his relative acts as resident payee, the home is deemed to be handling the resident's funds. Each home must develop and implement a policy and procedure outlining how the resident's funds will be managed. This policy and procedure must include the following: (7-1-05)T

**a.** Statement of whether the home will or will not manage resident funds; (7-1-05)T

**b.** If the home manages resident funds and the resident leaves the home under any circumstances, the home can only retain room and board funds prorated to the last day of the fifteen (15) calendar day notice period, or thirty (30) calendar day notice period as specified in the admission agreement, or upon moving from the home, whichever is later. All remaining funds must follow the resident, and resident funds must be used for resident expenses until a new payee is appointed. (7-1-05)T

**02. Managing Resident Funds**. A home that manages resident funds must: (7-1-05)T

**a.** Establish a separate account at a financial institution for each resident. There can be no commingling of resident funds with home funds. Borrowing between resident accounts is prohibited; (7-1-05)T

**b.** Notify the resident that funds are available for his use; (7-1-05)T

**c.** Bill each resident for his certified family home care charges on a monthly basis from his funds; (7-1-05)T

**d.** Document on a monthly or on a weekly basis any financial transactions in excess of five dollars ($5) between the resident and the home. A separate transaction record must be maintained for each resident; (7-1-05)T

**e.** Restore funds to the resident if the home cannot produce proper accounting records of resident’s funds or property, including receipts for purchases made using the resident's personal funds. Restitution of the funds to the resident is a condition for continued operation of the home; (7-1-05)T

**f.** Not require the resident to purchase goods or services from the home other than those designated in the admission agreement; (7-1-05)T

**g.** Provide access to the resident's funds to the resident, his legal guardian or conservator or another person of the resident's choice; (7-1-05)T

**h.** On the death of a private-pay resident, convey the resident's funds with a final accounting of those funds to the individual administering the resident's estate; within thirty (30) days; (7-1-05)T

**i.** On the death of a client of the Department, convey the resident's funds with a final accounting of those funds, to the Department within thirty (30) days. (7-1-05)T

**276. -- 299. (RESERVED).**

**300. SHORT-TERM CARE AND SUPERVISION.**
When the provider is temporarily unable to provide care or supervision to the resident, he may designate another adult to provide care and supervision or supervision only to the resident. The provider must assure that this short-term arrangement meets the needs of the resident and protects the resident from harm. (7-1-05)T

**01. Alternate Caregiver**. An alternate caregiver must be a certified family home provider. An alternate caregiver provides care and supervision in his home to a resident from another certified family home according to the resident's original plan of service and admission agreement. The provider is responsible to provide or arrange for resident-specific training for the alternate caregiver. Alternate care can be provided for up to thirty (30) consecutive days. (7-1-05)T

**02. Substitute Caregiver**. A substitute caregiver must be approved by the provider to provide care and supervision to the resident in the provider's certified family home. The provider is responsible to provide or arrange for resident-specific training for the substitute caregiver. Substitute care can be provided for up to thirty (30) consecutive days. In addition the substitute caregiver must have: (7-1-05)T

**a.** Current certification in first aid and Cardio-Pulmonary Resuscitation (CPR); (7-1-05)T

**b.** A criminal history check as provided in Section 009 of these rules; and (7-1-05)T

**c.** Completed the “Assistance with Medications” course as provided in Section 400 of these rules, if they will assist the resident with medications. (7-1-05)T

**03. Incidental Supervision**. An individual providing incidental supervision must be approved by the provider to supervise the resident. Incidental supervision must not include resident care. Incidental supervision may be provided for up to four (4) hours per week.(7-1-05)T

**301. -- 399. (RESERVED).**

**400. MEDICATION STANDARDS AND REQUIREMENTS.**

**01. Medication Policy**. The certified family home provider must develop written medication policies and procedures that outline in detail how the home will assure appropriate handling and safeguarding of medications. This documentation must be maintained in the home. (7-1-05)T

**02. Handling of Resident's Medication**. (7-1-05)T

**a.** The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately unless in a Mediset, blister pack, or similar system. (7-1-05)T

**b.** Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the resident's record. Medisets filled and labeled by a pharmacist or licensed nurse may serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use may also serve as written evidence of an order from the physician or other practitioner of the healing arts. (7-1-05)T

**c.** The home is responsible to safeguard the resident's medications. (7-1-05)T

**d.** Medications that are no longer used by the resident must not be retained by the certified family home for longer than thirty (30) calendar days. (7-1-05)T

**03. Self-Administration of Medication**. If the resident is responsible for administering his own medication without assistance, a written approval stating that the resident is capable of self-administration must be obtained from the resident's primary physician or other practitioner of the healing arts. The resident's record must also include documentation that a licensed nurse or other qualified professional has evaluated the resident's ability to self-administer medication and has found that the resident: (7-1-05)T

**a.** Understands the purpose of the medication; (7-1-05)T

**b.** Knows the appropriate dosage and times to take the medication; (7-1-05)T

**c.** Understands expected effects, adverse reactions or side effects, and action to take in an emergency; and (7-1-05)T

**d.** Is able to take the medication without assistance. (7-1-05)T

**04. Assistance With Medications**. The certified family home must provide assistance with medications to residents who need assistance; however, only a licensed nurse or other licensed health professional may administer medications. Prior to assisting residents with medication, the following conditions must be in place: (7-1-05)T

**a.** Each person assisting with resident medications must be an adult who successfully completed and follows the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. Family members previously exempted from this requirement must complete this course before July 1, 2006. (7-1-05)T

**b.** The resident's health condition is stable; (7-1-05)T

**c.** 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; (7-1-05)T

**d.** The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container or the medication has been placed in a

unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; (7-1-05)T

**e.** Written and oral instructions from the licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; (7-1-05)T

**f.** Written instructions are in place that outline required documentation of medication assistance, and whom to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; and (7-1-05)T

**g.** Procedures for disposal/destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course. (7-1-05)T

**05. Administration of Medications**. Only a licensed nurse or other licensed health professionals working within the scope of their license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". Some services are of such a technical nature that they must always be performed by, or under the supervision of, a licensed nurse or other licensed health professional. These services are outlined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Section 490. (7-1-05)T

**06. Written Record of Disposal**. A written record of all disposal of drugs must be maintained in the home and will include: (7-1-05)T

**a.** A description of the drug, including the amount; (7-1-05)T

**b.** The resident for whom the medication was prescribed; (7-1-05)T

**c.** The reason for disposal; (7-1-05)T

**d.** The method of disposal; and (7-1-05)T

**e.** Signatures of responsible home personnel and a witness or the resident's family. (7-1-05)T

**401. -- 499. (RESERVED).**

**500. ENVIRONMENTAL SANITATION STANDARDS.**
The home is responsible for disease prevention and maintenance of sanitary conditions. (7-1-05)T

**01. Water Supply**. The water supply for the home must be adequate, safe, and sanitary. (7-1-05)T

**a.** The home must use a public or municipal water supply or a Department-approved private water supply; (7-1-05)T

**b.** If water is from a private supply, water samples must be submitted to a private accredited laboratory or the District Public Health Laboratory for bacteriological examination at least annually or more frequently if deemed necessary by the Department. Copies of the laboratory reports must be kept on file at the home; and (7-1-05)T

**c.** There must be enough water pressure to meet the sanitary requirements at all times. (7-1-05)T

**02. Sewage Disposal**. The sewage disposal system must be in good working order. All sewage and liquid wastes must be discharged, collected, treated, and disposed of in a manner approved by the Department. (7-1-05)T

**03. Nonmunicipal Sewage Disposal**. For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every three (3) years thereafter the home must provide proof that the septic tank has been pumped or that pumping was not necessary ~~*at the time of the sewage system inspection. The home must follow the recommendations of the sewage system inspection*~~. In addition, at the time of initial certification: ~~*(7-1-05)T*~~(7-1-05)T

**a.** The home must obtain a statement from the local health district indicating that the sewage disposal system meets local requirements. The statement must be kept on file at the home; or (7-1-05)T

**b.** If the local health district does not issue these statements, ~~*the home must have the system inspected by a person in the business of servicing these systems*~~ *the home must obtain a statement to that effect from the health district*. The ~~*inspection report*~~ *statement* must be kept on file at the home. ~~*(7-1-05)T*~~(7-1-05)T

**04. Garbage and Refuse Disposal**. Garbage and refuse disposal must be provided by the home. (7-1-05)T

**a.** Garbage containers outside the home used for storage of garbage and refuse must be constructed of durable, nonabsorbent materials and must not leak or absorb liquids. Containers must be provided with tight-fitting lids. (7-1-05)T

**b.** Garbage containers must be maintained in good repair. Sufficient containers must be available to hold all garbage and refuse which accumulates between periods of removal from the premises. Storage areas must be kept clean and sanitary. (7-1-05)T

**05. Insect and Rodent Control**. The home must be maintained free from infestations of insects, rodents and other pests. Chemicals (pesticides) used in the control program must be selected, stored, and used safely. (7-1-05)T

**a.** The chemical must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer; (7-1-05)T

**b.** The home must take the necessary precautions to protect residents from obtaining toxic chemicals. (7-1-05)T

**06. Yard**. The yard surrounding the home must be safe and maintained. (7-1-05)T

**07. Linen-Laundry Facilities and Services**. A washing machine and dryer must be provided for the proper and sanitary washing of linen and other washable goods. (7-1-05)T

**08. Housekeeping and Maintenance**. Sufficient housekeeping and maintenance must be provided to maintain the interior and exterior of the home in a clean, safe, and orderly manner. (7-1-05)T

**a.** A sleeping room must be thoroughly cleaned including the bed, bedding, and furnishings before it is occupied by a new resident; and (7-1-05)T

**b.** Deodorizers must not be used to cover odors caused by poor housekeeping or unsanitary conditions. (7-1-05)T

**501. -- 599. (RESERVED).**

**600. FIRE AND LIFE SAFETY STANDARDS.**
Certified family homes must meet all applicable requirements of local and state codes concerning fire and life safety. (7-1-05)T

**01. General Requirements**. General requirements for the fire and life safety standards for a certified family home are: (7-1-05)T

**a.** The home must be structurally sound and equipped and maintained to assure the safety of residents; and (7-1-05)T

**b.** When natural or man-made hazards are present, suitable fences, guards, and railings must be provided to protect the residents according to their need for supervision as documented in the plan of service; and (7-1-05)T

**c.** The premises of the certified family home must be kept free from the accumulation of weeds, trash, and rubbish. (7-1-05)T

**02. Fire and Life Safety Requirements**. (7-1-05)T

**a.** Smoke detectors must be installed in sleeping rooms, hallways, on each level of the home, and as recommended by the local fire district. (7-1-05)T

**b.** Any locks installed on exit doors must be easily opened from the inside without the use of keys or any special knowledge; (7-1-05)T

**c.** Portable heating devices of any kind are prohibited; (7-1-05)T

**d.** Homes that use fuel-fired stoves must provide adequate railings or other approved protection designed to prevent residents from coming into contact with the stove surfaces; (7-1-05)T

**e.** Each resident's sleeping room will have a window that can be easily opened from the inside. The window sill height must not be more than forty-four (44) inches above the finished floor. Window openings must be at least twenty-two (22) inches in width and height; (7-1-05)T

**f.** Flammable or highly combustible materials must not be stored in the home; (7-1-05)T

**g.** Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; (7-1-05)T

**h.** Portable fire extinguishers must be mounted throughout the home according to the configuration of the home. Location of fire extinguishers is subject to Department approval. All extinguishers must be at least five (5) pound multipurpose ABC type and; (7-1-05)T

**i.** Electrical installations and equipment must comply with the applicable local and state electrical codes; (7-1-05)T

**j.** Solid fuel heating devices must be approved by the local building/heating/ venting/ air conditioning board. Openings in all solid fuel heating devices must have a door constructed of heat-tempered glass or other approved material; (7-1-05)T

**k.** Exits must be free from obstruction; (7-1-05)T

**l.** Doorways in the path of travel to an exit and all exit doorways must be at least twenty-eight (28) inches wide; (7-1-05)T

**m.** The door into each bathroom must unlock from the outside in case of an emergency. (7-1-05)T

**03. Smoking**. Smoking is a fire hazard. The home may choose to allow or not allow smoking. If the home chooses to allow smoking it must reduce the risk of fire by: (7-1-05)T

**a.** Prohibiting smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; (7-1-05)T

**b.** Prohibiting residents from smoking in bed; and (7-1-05)T

**c.** Prohibiting unsupervised smoking by residents unless unsupervised smoking is allowed in the plan of service. (7-1-05)T

**04. Emergency Preparedness**. Each certified family home will develop and implement a plan for emergencies including evacuation of the home. The emergency plan must be reviewed with residents at admission and at least every six (6) months thereafter. This review must be documented in each resident's individual file. (7-1-05)T

**05. Fire Drills**. Homes must conduct and document fire drills at least quarterly. Residents who are physically unable to exit unassisted are exempt from physical participation in the drill if the provider has an effective evacuation plan for such residents and discusses the plan

with the resident at the time of the drill. (7-1-05)T

**06. Report of Fire**. A separate report on each fire incident occurring within the home must be submitted to the Department within thirty (30) calendar days of the occurrence. The report must include date of incident, origin, extent of damage, how the fire was extinguished, and injuries, if any. (7-1-05)T

**07. Maintenance of Equipment**. The home will assure that all equipment is properly maintained. (7-1-05)T

**a.** The smoke detectors must be tested at least monthly and a written record of the test results maintained on file; (7-1-05)T

**b.** Portable fire extinguishers must be serviced annually by an outside servicing agency. Fire extinguishers purchased in the last twelve (12) months are exempt from annual service if the home has a dated receipt on file. All portable fire extinguishers must be examined at least quarterly by a knowledgeable family member to determine that; (7-1-05)T

i. The extinguisher is in its designated location; (7-1-05)T

ii. Seals or tamper indicators are not broken; (7-1-05)T

iii. The extinguisher has not been physically damaged; (7-1-05)T

iv. The extinguisher does not have any obvious defects; and (7-1-05)T

v. Inspecting tags on each extinguisher show at least the initials of the person making the quarterly examinations and the date of the examinations. (7-1-05)T

**c.** Fuel-fired heating systems must be inspected, serviced, and approved at least annually by person(s) in the business of servicing these systems. The inspection records must be maintained on file in the home. (7-1-05)T

**601. -- 699. (RESERVED).**

**700. HOME CONSTRUCTION AND PHYSICAL HOME STANDARDS.**

**01. General Requirements**. Any residence used as certified family home must be suitable for that use. Certified family homes must only be located in buildings intended for residential use. (7-1-05)T

**a.** Remodeling or additions to homes must be consistent with residential use of the property and must conform to local building standards including obtaining building permits as required by the local jurisdiction. Remodeling that is not consistent with the general practice of the neighborhood is not permitted. Examples may include converting garages to bedrooms or constructing large buildings which overwhelm the lot. (7-1-05)T

**b.** All homes are subject to Department approval. (7-1-05)T

**02. Walls and Floors**. Walls and floors must withstand frequent cleaning. Walls in sleeping rooms must extend from floor to ceiling. (7-1-05)T

**03. Telephone**. There must be a landline telephone in the home that is accessible to all residents. The resident must have adequate privacy while using the telephone. The telephone must be immediately available in case of an emergency. Emergency numbers must be posted near the telephone. (7-1-05)T

**04. Toilet Facilities and Bathrooms**. Each certified family home must contain: (7-1-05)T

**a.** At least one (1) flush toilet, one (1) tub or shower, and one (1) lavatory with a mirror; (7-1-05)T

**b.** Toilet facilities and bathrooms must be separated from all rooms by solid walls or partitions; (7-1-05)T

**c.** All toilet facilities and bathrooms must have either a window that is easily opened or forced ventilation to the outside; (7-1-05)T

**d.** Tubs, showers, and lavatories must be connected to hot and cold running water; and (7-1-05)T

**e.** Access to resident toilet facilities and bathrooms must not require a resident to pass through another sleeping room to reach the toilet or bath. (7-1-05)T

**05. Accessibility for Residents With Physical and Sensory Impairments**. Homes choosing to provide services to residents who have difficulty with mobility or who have sensory impairments must assure the physical environment meets the needs of the resident and maximizes independent mobility and use of appliances, bathroom facilities, and living areas. The home must provide necessary accommodations as described below according to the individual resident's needs: (7-1-05)T

**a.** A ramp that complies with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) 4.8; (7-1-05)T

**b.** Bathrooms and doorways large enough to allow easy passage of a wheelchair and that comply with the ADAAG 4.13; (7-1-05)T

**c.** Toilet facilities that comply with the ADAAG 4.16 and 4.23; (7-1-05)T

**d.** Sinks that comply with the ADAAG 4.24; (7-1-05)T

**e.** Grab bars in resident toilet facilities and bathrooms that comply with the ADAAG 4.26; (7-1-05)T

**f.** Bathtubs and shower stalls that comply with ADAAG 4.20 and 4.21; (7-1-05)T

**g.** Non-retractable faucet handles that comply with the ADAAG 4.19 and 4.27. Self-closing valves are not allowed; (7-1-05)T

**h.** Suitable handrails on both sides of all stairways leading into and out of the home that comply with the ADAAG 4.9.4; (7-1-05)T

**06. Storage Areas**. Adequate storage must be provided in addition to the required storage in resident sleeping rooms. (7-1-05)T

**07. Lighting**. Adequate lighting must be provided in all resident sleeping rooms and any other rooms accessed by the resident. (7-1-05)T

**08. Ventilation**. The home must be well ventilated and the provider must take precautions to prevent offensive odors. (7-1-05)T

**09. Heating**. The temperature in the certified family home must be maintained at seventy degrees Fahrenheit (70°F) or more during waking hours when residents are at home and sixty-five degrees Fahrenheit (65°F) or more during sleeping hours or as defined in the plan of service. Wood stoves must not be the primary source of heat and the thermostat for the primary source of heat must be remotely located away from the wood stove. (7-1-05)T

**10. Plumbing**. All plumbing in the home must comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. (7-1-05)T

**11. Resident Sleeping Rooms**. (7-1-05)T

**a.** The resident's sleeping room must not be in an attic, stairway, hall, or any room commonly used for other than bedroom purposes. The resident's sleeping rooms may be in a basement only if the following conditions are met: (7-1-05)T

i. The window must not open into a window well that cannot be exited. All other fire and life safety requirements for windows must be met; (7-1-05)T

ii. The basement must have floors, ceilings, and walls which are finished to the same degree as the rest of the home. The sleeping room must meet all other requirements of these rules; and (7-1-05)T

iii. The resident must be assessed through the plan of service to be capable of evacuating from the basement without assistance in an emergency. (7-1-05)T

**b.** Walls must run from floor to ceiling and doors must be solid; (7-1-05)T

**c.** The resident must not occupy the same bedroom as the provider. The resident must not occupy the same bedroom as the provider's family unless the resident is also a family member; (7-1-05)T

**d.** Ceiling heights in sleeping rooms must be at least seven feet six inches (7’6”);

(7-1-05)T

**e.** Sleeping rooms must have closets equipped with doors. Closet space shared by two (2) residents, must have a substantial divider separating each resident's space. Free-standing closets must be deducted from the square footage in the sleeping room; and (7-1-05)T

**f.** Sleeping rooms must have at least one-hundred (100) square feet of floor space in a one (1) person sleeping room and at least one-hundred and sixty (160) square feet of floor space in a two (2) person sleeping room. (7-1-05)T

**701. MANUFACTURED HOMES.**

**01. Use of Manufactured Homes**. A late-model manufactured home may be approved for use as a certified family home when the home meets the following requirements. (7-1-05)T

**a.** The date the home was manufactured is within eighteen (18) years of the date of initial certification. (7-1-05)T

**b.** The home meets the requirements of the local jurisdiction in which the home is located. If no local standard has been established, the home must be installed according to the Idaho Manufactured Home Installation standard. (7-1-05)T

**02. Previously Certified**. A manufactured home approved for use as a certified family home before July 1, 2005, may continue to be certified when evaluated on a case-by-case basis. (7-1-05)T

**702. -- 709. (RESERVED).**

**710. SITE REQUIREMENTS FOR CERTIFIED FAMILY HOMES.**
In addition to the requirements of Section 700 of these rules, certified family homes must comply with the following site requirements. (7-1-05)T

**01. Fire District**. The home must be in a lawfully constituted fire district. (7-1-05)T

**02. Accessible Road**. The home must be served by an all-weather road kept open to motor vehicles at all times of the year. (7-1-05)T

**03. Emergency Medical Services**. The home must be accessible to emergency medical services within thirty (30) minutes driving time; and (7-1-05)T

**04. Accessible to Services**. The home must be accessible within thirty (30) minutes driving time to necessary social, medical, and rehabilitation services. (7-1-05)T

**711. -- 899. (RESERVED).**

**900. EMERGENCY POWERS OF THE DIRECTOR.**
In the event of an emergency endangering the life or safety of a resident, the Director may

summarily suspend or revoke any certified family home certificate. As soon thereafter as practical, the Director will provide an opportunity for a hearing in accordance with the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

**901. ENFORCEMENT PROCESS.**
If the Department finds that a home does not or did not meet a rule governing certified family homes, it may impose a remedy, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (7-1-05)T

**01. Recommendation of Remedy**. In determining which remedy to recommend, the Department will consider the home's compliance history, change of ownership, the number of deficiencies, scope, and severity of the deficiencies. Subject to these considerations, the Department may impose any of the following remedies: (7-1-05)T

**a.** Ban on all admissions, see Section 910 of these rules; (7-1-05)T

**b.** Ban on admissions of residents with certain diagnosis, see Section 911 of these rules; (7-1-05)T

**c.** Summarily suspend the certificate and transfer residents, see Section 912 of these rules; (7-1-05)T

**d.** Issue a provisional certificate, see Subsection 110.02 of these rules; or (7-1-05)T

**e.** Revoke the home's certificate, see Section 913 of these rules. (7-1-05)T

**02. Notice of Enforcement Remedy**. The Department will give the home written notice of an enforcement remedy by certified mail or by personal service. (7-1-05)T

**902. FAILURE TO COMPLY.**
The Department may institute an action to revoke the home's certificate when the Department determines the home is out of compliance. (7-1-05)T

**01. Out of Compliance**. A home has not complied with a program requirement within thirty (30) days of the date the home is found out of compliance with that requirement. (7-1-05)T

**02. Lack of Progress**. A home has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted the home's plan of correction. (7-1-05)T

**903. REPEATED NONCOMPLIANCE.**
When the Department makes a determination of repeated noncompliance with respect to a home, the Department may impose any of the remedies listed in Sections 910 through 913 of these rules. The Department will monitor the home on an as-needed basis, until the home has demonstrated that it is in compliance with all program requirements governing homes and that it will remain in compliance. (7-1-05)T

**904. -- 909. (RESERVED).**

**910. ENFORCEMENT REMEDY OF BAN ON ALL ADMISSIONS.**
All admissions to the home are banned pending satisfactory correction of all deficiencies. Bans will remain in effect until the Department determines that the home has achieved full compliance with all program requirements, or until a substitute remedy is imposed. (7-1-05)T

**911. ENFORCEMENT REMEDY OF BAN ON ADMISSIONS OF RESIDENT WITH SPECIFIC DIAGNOSIS.**
Admission of any resident with a specific diagnosis is banned. A ban may be imposed for all prospective residents both state and private, and will prevent the home from admitting the kinds of residents for whom it has shown an inability to provide adequate care. (7-1-05)T

**912. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENT.**
The Department may summarily suspend a home'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. (7-1-05)T

**913. ENFORCEMENT REMEDY OF REVOCATION OF CERTIFICATE.**

**01. Revocation of the Home's Certificate**. The Department may institute a revocation action when persuaded by a preponderance of the evidence that the home is not in substantial compliance with this chapter. (7-1-05)T

**02. Causes for Revocation of the Certificate**. The Department may revoke any certificate to include the following causes: (7-1-05)T

**a.** The certificate holder has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (7-1-05)T

**b.** The home is not in substantial compliance with these rules; (7-1-05)T

**c.** When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; (7-1-05)T

**d.** Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the home. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (7-1-05)T

**e.** The provider has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a home; (7-1-05)T

**f.** The provider has violated any of the conditions of a provisional certificate; (7-1-05)T

**g.** The home has one (1) or more core issues. A core issue is a deficiency that

endangers the health, safety, or welfare of any resident; (7-1-05)T

**h.** An accumulation of minor violations that, taken as a whole, would constitute a major deficiency; (7-1-05)T

**i.** Repeat violations of any requirement of these rules or of the Idaho Code; (7-1-05)T

**j.** The home lacks the ability to properly care for the type of residents residing at the home, as required by these rules or as directed by the Department; (7-1-05)T

**k.** The home is not in substantial compliance with the provisions for services, resident rights or admissions; (7-1-05)T

**l.** Certificate holder refuses to allow the Department or Protection and Advocacy agencies full access to the home environment, home records, or the residents; or (7-1-05)T

**m.** Any condition exists in the home which endangers the health or safety of any resident. (7-1-05)T

**914. (RESERVED).**

**915. TRANSFER OF RESIDENT.**
The Department may require transfer of a resident from a home to an alternative placement on the following grounds. (7-1-05)T

**01. Violation of Rules**. As a result of a violation of a provision of these rules or standards, the home is unable or unwilling to provide an adequate level of meals, lodging, personal assistance, or supervision of a resident. (7-1-05)T

**02. Violation of Resident's Rights**. A violation of a resident's rights provided in Section 39-3516, Idaho Code, or Section 200 of these rules. (7-1-05)T

**03. Immediate Jeopardy**. A violation of a provision of this chapter or applicable rules or standards results in conditions that present an immediate jeopardy. (7-1-05)T

**916. -- 949. (RESERVED).**

**950. RIGHT TO SELL.**
Nothing contained in these rules limits the right of any home owner to sell, lease, mortgage, or close any home in accordance with all applicable laws. (7-1-05)T

**951. -- 999. (RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES

### DOCKET NO. 16-0411-0501 (CHAPTER REPEAL)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective on July 1, 2006, following the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, page 211.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There will not be any fiscal impact to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cameron Gilliland (Division of FACS) at (208) 334-5512.

DATED this 11th day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

### *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY**: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code.

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

| | | | |
|---|---|---|---|
| **Date:** | **Tuesday, August 9, 2005** | **Tuesday, August 16, 2005** | **Monday, August 22, 2005** |
| **Time:** | **6:00 - 8:00 p.m.** | **6:00 - 8:00 p.m.** | **6:00 - 8:00 p.m.** |
| **Place:** | **Region IV Office**<br>**1720 Westgate Drive, Suite D**<br>**Room 119**<br>**Boise, ID** | **Region I**<br>**Kootenai Medical Center**<br>**Health Resource Center**<br>**2003 Lincoln Way**<br>**Fox #2**<br>**Coeur d'Alene, ID** | **Region VII**<br>**Development Center**<br>**2475 Leslie Ave**<br>**Idaho Falls, ID** |

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

**DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: This entire chapter of rules is being repealed. The text of the rewritten chapter will appear under Docket No. 16-0411-0502**.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No fees are being imposed or increased as result of this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There will not be any fiscal impact to State of Idaho general funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted for the rewrite of the chapter. The negotiated rulemaking workgroup met monthly from April 28, 2004, through June 2, 2005, and was comprised of Department staff, DDA providers, and advocates, including representives from Comprehensive Advocacy (Co-Ad) and the Idaho Council on Developmental Disabilities.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cameron Gilliland (Division of FACS) at (208) 334-5512.

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 Wednesday, August 24, 2005.

DATED this 28th day of June, 2005.

**IDAPA 16.04.11 IS BEING REPEALED IN ITS ENTIRETY.**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES

### DOCKET NO. 16-0411-0502 (CHAPTER REWRITE)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective on July 1, 2006, following the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code.

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

**Changes were made to the text of the pending rule based on comments received during the public comment period (August 3 through 24, 2005), including those submitted at the three public hearings held for this docket. The public hearings were held in Boise, Coeur d'Alene, and Idaho Falls**.

**Changes made to the text include**:

**1. Clarified requirements under mandatory criminal history section and added "people first" language**.

**2. Clarified several definitions and added a new definition for "staff"**.

**3. Added "administrator" to the list of those for whom the Department does not have to consider an application for certification from for five years after denial or revocation or their DDA license or certification**.

**4. Under the application for initial certification section, clarified that the code of ethics must contain standards for maintaining participant confidentiality, and clarified that evidence of staff compliance with the criminal history and background check requirements be included in the application**.

**5. Clarified agency requirements for reporting any changes to optional services provided when requesting renewal of a certificate**.

**6. Under the enforcement process section, clarified remedies that the Department may apply when an agency fails to comply with the rules**.

**7. Under the general staffing requirements section, added clarification stating those duties for which the agency administrator is responsible; also added language requiring agencies to maintain documentation of staff qualifications**.

**8. Added clarifications to general training requirements section including listing which staff required to complete the twelve hours of formal training each calendar year**.

**9. Under the staff qualifications section, added the Blended Early Childhood/ Early Childhood Special Education (EC/ECSE) certificate to the options for a developmental specialist providing services to children birth to three and clarified the requirements for paraprofessionals delivering developmental therapy to children birth to three**.

**10. Under the facility standards section, added clarification that agencies must document the amount of time it took to evacuate the building when conducting their quarterly fire drills**.

**11. Clarified that the forty-five day requirement for completion of the comprehensive assessments does not apply to participant plans of service authorized under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services"**.

**12. Under the section listing the types of comprehensive assessments, clarified that psychological testing and the psychiatric diagnostic interview are both included under the psychological assessment**.

**13. Under the section with requirements for providing DDA services to participants eighteen years of age or older (and Idaho State School and Hospital Waiver participants), added clarifications regarding those participants to whom this section does not apply**.

**14. Under the section with requirements for providing DDA services to children three through seventeen, added distinction between categorical and functional eligibility, clarified definition for duration of service, added clarification that a physician's signature is not needed on the plan of service for adults under an Individual Program Plan (IPP), added clarification that service objectives under the IPP must be age-appropriate, and clarified that deviations beyond the limits specified require documentation of a participant-based reason**.

**15. Under the Infant Toddler section, clarified that the rules apply specifically to DDA services delivered to children birth to three years of age, not to all services available under the Idaho Infant Toddler program**.

**16. Clarified requirements under the program implementation plan section**.

**17. Added clarifications to the program documentation requirements section**.

**18. Added clarifications to the general record requirements section**.

**19. Clarified the documentation requirements for DDAs providing services to school-age children**.

**20. Added a new section of requirements that applies to the delivery of all DDA services**.

**21. Under the developmental therapy section, clarified that developmental therapy provided must be age appropriate and can not include tutorial activities or assistance with educational tasks**.

**22. Clarified that Program Implementation Plans are not required for collateral contact**.

**23. Added requirement that after July 1, 2006, each agency seeking to begin providing Intensive Behavioral Intervention (IBI) services must have provided developmental therapy for at least a year**.

**24. Rewrote the section regarding IBI authorization of the reviews required throughout the year**.

**25. Clarified requirements for the comprehensive IBI assessment**.

**26. Added clarification that the IBI transition plan may not be used as a substitute for the transition plan required under the plan of service**.

**Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule**.

**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, 2005, Idaho Administrative Bulletin, Vol. 05-8, pages 212 through 257**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There will not be any fiscal impact to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Cameron Gilliland (Division of FACS) at (208) 334-5512.

DATED this 10th day of November, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
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(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code.

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

| | | | |
|---|---|---|---|
| **Date:** | **Tuesday, August 9, 2005** | **Tuesday, August 16, 2005** | **Monday, August 22, 2005** |
| **Time:** | **6:00 - 8:00 p.m.** | **6:00 - 8:00 p.m.** | **6:00 - 8:00 p.m.** |
| **Place:** | **Region IV Office**<br>**1720 Westgate Drive, Suite D**<br>**Room 119**<br>**Boise, ID** | **Region I**<br>**Kootenai Medical Center**<br>**Health Resource Center**<br>**2003 Lincoln Way**<br>**Fox #2**<br>**Coeur d'Alene, ID** | **Region VII**<br>**Development Center**<br>**2475 Leslie Ave**<br>**Idaho Falls, ID** |

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

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

The chapter of rules that govern Developmental Disabilities Agencies (DDAs) has been completely rewritten to better assure that safe, high-quality developmental disabilities services are being delivered in an efficient manner to best meet the needs of people with developmental disabilities. The rewrite aims to make the requirements, both for certification and providing services, easier to understand and readily enforceable. This will improve compliance with the rules, reduce hearings, better assure the safety and quality of services, increase the efficiency of the system for providing services, and generally make the rules easier for staff and providers to use. More than a year of negotiated rulemaking was conducted in the development of these rules. This docket contains the text of the rewritten chapter of rules, IDAPA 16.04.11, "Developmental Disabilities Agencies".

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

No fees are being imposed or increased as result of this rulemaking.

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

There will not be any fiscal impact to State of Idaho general funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The negotiated rulemaking workgroup met monthly from April 28, 2004, through June 2, 2005, and was comprised of Department staff, DDA providers, and advocates, including representatives from Comprehensive Advocacy (Co-Ad) and the Idaho Council on Developmental Disabilities.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cameron Gilliland (Division of FACS) at (208) 334-5512.

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 Wednesday, August 24, 2005.

DATED this 30th day of June, 2005.

Sherri Kovach
Program Supervisor

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**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**IDAPA 16**
**TITLE 04**
**CHAPTER 11**

## 16.04.11 - DEVELOPMENTAL DISABILITIES AGENCIES

**000. LEGAL AUTHORITY.**
The Idaho Board of Health and Welfare is authorized under the "Idaho Developmental Disabilities Services and Facilities Act of 1978," Sections 39-4601 et seq., Idaho Code, to adopt rules governing Developmental Disabilities Agencies in Idaho. ( )

**001. TITLE AND SCOPE.**

**01. Title**. The title of these rules is IDAPA 16.04.11, "Developmental Disabilities Agencies (DDA)". ( )

**02. Scope**. These rules govern: ( )

**a.** The certification of Developmental Disabilities Agencies providing rehabilitative and habilitative services to persons with developmental disabilities; and ( )

**b.** The provision of these services to those eligible under this chapter of rules. ( )

**c.** All agencies that meet the definition of a Developmental Disabilities Agency (DDA) in Section 010 of these rules must be certified by the Department in accordance with the requirements in this chapter of rules. Rules regarding Medicaid reimbursement for DDA services are found in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 120. ( )

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations for this chapter of rules. ( )

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

**004. INCORPORATION BY REFERENCE.**
There are no documents that have been incorporated by reference into this chapter of rules.( )

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

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

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

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

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

**05. Internet Website**. The Department's internet website is found at "http://www.healthandwelfare.idaho.gov". ( )

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

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

**02. Public Records**. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**007. -- 008. (RESERVED).**

**009. MANDATORY CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Verification of Compliance**. The agency must verify that all employees, subcontractors, agents of the agency, and volunteers delivering *DDA* services to *participants with* developmental *disabilities* have complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ( )

**02. When Agency Employees May Begin Working**. Once an employee, subcontractor, agent of the agency, or volunteer delivering *DDA* services to *participants with*

developmental *disabilities* has completed a self-declaration form and has been fingerprinted, he may begin working for the agency on a provisional basis while awaiting the results of the criminal history check. ( )

**03. Requirement to Report Additional Criminal Convictions**. Once an employee, subcontractor, agent of the agency, or volunteer delivering *DDA* services to *participants with* developmental *disabilities* has received a criminal history clearance, any additional criminal convictions must be reported to the Department or its designee when the agency learns of the conviction. ( )

**04. Requirement to Report Pending Investigations or Charges**. Once an employee, subcontractor, agent of the agency, or volunteer delivering *DDA* services to *participants with* developmental *disabilities* has received a criminal history clearance, the agency must immediately report to the Department when any of them is charged with criminal charges, is charged with or is under investigation for abuse, neglect, or exploitation of any vulnerable adult or child, or when an adult protection or child protection complaint against them is substantiated. ( )

**010. DEFINITIONS -- A THROUGH O.**

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

**01. Adult**. A person who is eighteen (18) years of age or older or an Idaho State School and Hospital (ISSH) Waiver participant. ( )

**02. Agency**. A developmental disabilities agency (DDA) as defined in Section 010 of this rule. ( )

**03. Annual**. Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. ( )

**04. Baseline**. A baseline is pre-intervention or annual data used to gauge a participant's level of independent performance as a basis for initiating therapeutic intervention. ( )

**05. Board**. The Idaho State Board of Health and Welfare. ( )

**06. Communicable Disease**. A disease that may be transmitted from one (1) person or an animal to another person either by direct contact or through an intermediate host, vector, inanimate object, or other means that may result in infection, illness, disability, or death. ( )

**07. Comprehensive Assessment**. An assessment used for diagnostic and evaluation purposes that contains uniform criteria used to *contribute to the determination of* a person's eligibility for DDA services and the need for those services. ( )

**08. Deficiency**. A determination of non-compliance with a specific rule or part of rule. ( )

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

**10. Developmental Disabilities Agency (DDA)**. A DDA is an agency that is: ( )

**a.** A type of developmental disabilities facility, as defined in Section 39-4604(7), Idaho Code, that is non-residential and provides services on an outpatient basis; ( )

**b.** Certified by the Department to provide DDA services to people with developmental disabilities, in accordance with these rules; ( )

**c.** A business entity, open for business to the general public; and ( )

**d.** Primarily organized and operated to provide developmental therapy and other DDA services and the corresponding assessments to people with developmental disabilities. ( )

**11. DDA Services**. A DDA provides services that are rehabilitative and habilitative in nature. DDA services include assessment, diagnostic, and treatment services that are provided on an outpatient basis to persons with developmental disabilities and may be community-based, home-based, or center-based in accordance with the requirements of this chapter. Each DDA is required to provide developmental therapy, and, in addition, also must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. A DDA may also opt to provide pharmacological management, psychiatric diagnostic interviews, community crisis supports, collateral contact, and Intensive Behavioral Intervention (IBI). ( )

**12. Developmental Disability**. A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ( )

**a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and ( )

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and ( )

**c.** Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. ( )

**13. Developmental Specialist**. A person qualified to conduct developmental assessments and developmental therapy under these rules. ( )

**14. Developmental Therapy**. Developmental therapy is the use of therapeutic intervention and positive behavioral techniques that result in measurable skill acquisition or prevent regression where documentation shows that regression is anticipated in the following

areas: ( )

**a.** Self-care; ( )

**b.** Receptive and expressive language; ( )

**c.** Learning; ( )

**d.** Mobility; ( )

**e.** Self-direction; ( )

**f.** Capacity for independent living; and ( )

**g.** Economic self-sufficiency. ( )

**15. Habilitation**. The process of developing skills and abilities. ( )

**16. Individualized Family Service Plan (IFSP)**. An initial or annual plan of service, developed by the Department or its designee, for providing early intervention services to children birth to age three (3). This plan must meet the provisions of the Individuals with Disabilities Education Act (IDEA), Part C. ( )

**17. Individual Program Plan (IPP)**. An initial or annual plan of service developed by the DDA for providing DDA services to: ( )

**a.** Children from three (3) through seventeen (17) years of age; ( )

**b.** Participants up to age twenty-one (21) who are receiving *IBI or additional DDA services under the* Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) *program*; or ( )

**c.** Participants eighteen (18) years of age or older receiving DDA services and who are using the Home and Community Based Services (HCBS) Waiver for the Aged and Disabled (A&D), State Plan PCS, or are living in a nursing facility. ( )

**18. Individual Service Plan (ISP)**. An initial or annual plan of service, for persons eighteen (18) years of age or older or ISSH waiver participants, that identifies all services and supports developed under a person-centered planning process. The Department authorizes each ISP at least once every three hundred sixty-five (365) days. This type of plan is referred to as the "plan of service" in IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". ( )

**19. Integration**. The process of promoting a life for individuals with developmental disabilities that is as much as possible like that of other citizens of the community, including living in the community and having access to community resources. A further goal of this process is to enhance the social image and personal competence of individuals with developmental disabilities. ( )

**20. Intensive Behavioral Intervention (IBI)**. Individualized, comprehensive interventions *that have been shown to be effective and are* used on a short term, one-to-one basis that*:* *( )*

***a.*** *P*roduce measurable outcomes that diminish behaviors that interfere with the development and use of language and appropriate social interaction skills*;* or

***b.*** *B*roaden an otherwise severely restricted range of interest*; and* ( )

***c.*** *Increase the child's ability to participate in other therapies and environments.* *( )*

**21. Medical/Social History**. An assessment completed by a licensed social worker or other qualified professional working within the scope of his license. This assessment of the participant's history, home, family, and physical environment is part of the process used to determine his treatment needs. ( )

**22. Medical, Social, and Developmental Assessment Summary**. A form used by the Department to gather a participant's medical, social and developmental history and other summary information. It is required for all participants receiving DDA services under an ISP. The information is used in the assessment and authorization of a participant's services. ( )

**23. Objective**. A behavioral outcome statement developed to address a particular need identified for a participant. An objective is written in measurable terms that specify a target date for completion, no longer than *one* (*1*) year in duration, and include criteria for successful attainment of the objective. ( )

**011. DEFINITIONS -- P THROUGH Z.**
For the purposes of these rules, the following terms are used as defined below: ( )

**01. Paraprofessional**. A person, such as an aide or therapy technician, who is qualified to assist a qualified professional in providing services to persons with developmental disabilities. ( )

**02. Participant**. A person who has been identified as having a developmental disability as defined in this chapter, and who is receiving services through a DDA. ( )

**03. Person-Centered Planning Process**. A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. ( )

**04. Person-Centered Planning Team**. The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. ( )

**05. Plan Developer**. A paid or nonpaid person identified by the participant who is responsible for developing an ISP and subsequent addenda that covers all services and supports, based on a person-centered planning process. ( )

**06. Plan Monitor**. A person who oversees the provision of services on the ISP on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. ( )

**07. Plan of Service**. An initial or annual plan that identifies services and supports. Plans are *developed* annually. In this chapter of rules, "plan of service" may refer to any of the following: IFSP, IPP, or ISP. ( )

**08. Practitioner of the Healing Arts, Licensed**. A licensed physician, physician assistant, or nurse practitioner. ( )

**09. Prior Authorization (PA)**. A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". ( )

**10. Probe**. A probe is data gathered on an intermittent basis, after a baseline is established, to measure a participant's level of independent performance as related to an identified objective. ( )

**11. Program Implementation Plan**. A plan that details how DDA goals from the plan of service will be accomplished. ( )

**12. Provider**. An agency, or an individual working for an agency, that furnishes DDA services under the provisions of these rules. ( )

**13. Provider Status Review**. The written documentation that identifies a participant's progress toward goals defined in the ISP. ( )

**14. Provisional Certificate**. A certificate issued by the Department to a DDA with deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, and not exceeding, six (6) months. ( )

**15. Psychotherapy**. Treatment methods using a specialized, formal interaction between a qualified professional and an individual, family, or group in which a therapeutic relationship is established, maintained, or sustained to understand unconscious processes, or intrapersonal, interpersonal, and psychosocial dynamics, or the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. ( )

**16. Qualified Professional**. A professional delivering services within the scope of his practice and in accordance with the requirements of this chapter. ( )

**17. Rehabilitation**. The process of improving skills or level of adjustment to increase

the person's ability to maintain satisfactory independent or dependent functioning. ( )

**18. Repeat Deficiency**. A violation or deficiency found on a resurvey or revisit to a DDA that was also found during the previous survey or visit. ( )

**19. Service**. Assessment, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. ( )

**20. Service Coordination**. Service coordination is an activity that assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. The delivery of service coordination is governed by IDAPA 16.03.17, "Service Coordination". ( )

**21. Service Coordinator**. An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.17, "Service Coordination". ( )

**22. Specific Skill Assessment**. A type of assessment used to determine the baseline or the need for further intervention for the discipline area being assessed. ( )

***23. Staff****. Employees or contractors of an agency who provide services, including those persons with whom the agency has a formal, written agreement. ( )*

**24. Supervision**. Initial direction and procedural guidance by a qualified professional and periodic inspection of the actual work performed at the service delivery site. ( )

**25. Supports**. Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. ( )

**012. -- 199. (RESERVED).**

## CERTIFICATION REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES AGENCIES (Sections 200 Through 299)

**200. DDA CERTIFICATION.**

**01. Application for Certification**. All DDAs must apply for certification under these rules. ( )

**02. Restriction on Certification**. A business entity established by a parent for the sole purpose of providing DDA services to his own child cannot be certified as a DDA. ( )

**03. Effect of Previous Revocation or Denial of a Certificate or License**. The

Department is not required to consider the application of any operator, *administrator,* or owner of an agency *who* has had *his* license or certification denied or revoked until five (5) years have lapsed from the date of denial or revocation. ( )

**04. Accessible Records**. The DDA and records required under these rules must be accessible to the Department during normal operations of the agency for the purpose of inspection and copying, with or without prior notification, under Sections 39-4605(4), Idaho Code. ( )

**201. APPLICATION FOR INITIAL CERTIFICATION.**

**01. Certification Required**. Before any agency can operate as a DDA, it must obtain DDA certification from the Department. No agency may provide DDA services until the Department has approved the application for certification. No agency may provide DDA services without a current certificate. ( )

**02. Open Application**. Application for certification from new agencies will be accepted on an open and continuous basis. ( )

**03. National Accreditation**. The Department may adopt the policy of accepting national accreditation in lieu of state certification for developmental disabilities agencies. ( )

**04. Content of Application for Certification**. Application for certification must be made on the Department-approved form available by contacting the Department as described in Section 005 of these rules. The application and supporting documents must be received by the Department at least sixty (60) days prior to the planned opening date. The application must include all of the following: ( )

**a.** Name, address, and telephone number of the agency; ( )

**b.** Types of services to be provided by the agency and the anticipated capacity of each service; ( )

**c.** The geographic service area of the agency; ( )

**d.** The anticipated date for the initiation of services; ( )

**e.** An accurate and complete statement of all business names of the agency as filed with the Secretary of State, whether an assumed business name, partnership, corporation, limited liability company or other entity, that identifies each owner with more than five percent (5%) interest in the agency, and the management structure of the agency; ( )

**f.** A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency complies with pertinent state and federal requirements governing equal opportunity and nondiscrimination; ( )

**g.** Written code of ethics policy adopting a code of ethics relevant to professional activities with participants and colleagues, in practice settings. The policy must articulate basic

values, ethical principles and standards for *confidentiality*, conflict of interest, exploitation, and inappropriate boundaries in the developmental disabilities agency's relationship with participants and with other agencies. The code of ethics adopted must reflect nationally-recognized standards of practice; ( )

**h.** A copy of the proposed organizational chart or plan for staffing of the agency; ( )

**i.** Staff qualifications including resumes, job descriptions, *evidence of compliance with criminal history and background check requirements in Subsections 009.01 through 009.03 of these rules*, and copies of state licenses and certificates for staff when applicable; ( )

**j.** Written transportation safety policies and procedures in accordance with Section 501 of these rules; ( )

**k.** Staff and participant illness policy, communicable disease policy, and other health-*related* policies and procedures in accordance with Section 510 of these rules; ( )

**l.** Written policies and procedures that address special medical or health care needs of participants in accordance with Section 510 of these rules; ( )

**m.** Written medication policies and procedures in accordance with Section 511 of these rules; ( )

**n.** Written admission and transition policies and procedures; ( )

**o.** Written description of the agency's quality assurance program developed in accordance with Section 900 of these rules; ( )

**p.** Written participant grievance policies and procedures in accordance with Section 905 of these rules; ( )

**q.** Written policies and procedures for reporting incidents to the adult or child protection authority in accordance with Section 910 of these rules; ( )

**r.** Written policies and procedures that address the development of participants' social skills and the management of participants' inappropriate behavior in accordance with Section 915 of these rules; ( )

**s.** Written description of the program records system including a completed sample of a plan of service for participants, program implementation plan, and a monitoring record; ( )

**t.** Written description of the fiscal record system including a sample of program billing; and ( )

**u.** Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which certification

is requested. ( )

**v.** When center-based services are to be provided, the following are also required for each service location: ( )

i. Address and telephone number for each service location; ( )

ii. A checklist that verifies compliance with the ADA requirements in accordance with Section 500 of these rules; ( )

iii. Evidence of a local fire safety inspection; ( )

iv. Evidence of compliance with local building and zoning codes, including occupancy permit; ( )

v. Written policies and procedures covering the protection of all persons in the event of fire and other emergencies in accordance with Section 500 of these rules; and ( )

vi. Written policies and procedures regarding emergency evacuation procedures. ( )

**05. Department Review of Application**. Upon receipt of the application form and initial application materials, the Department will review the materials to determine if the agency has systems in place, that if properly implemented, would result in regulatory compliance. ( )

**06. Department's Written Decision**. A written decision regarding certification will be submitted to the agency by the Department within thirty (30) days of the date the completed application packet is received by the Department. ( )

**202. CHANGES EACH DDA IS REQUIRED TO REPORT.**

**01. Change of Ownership or Physical Location**. ( )

**a.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change in ownership or physical location. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change(s). An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**b.** When an agency plans to provide center-based services in a new physical location, on a temporary or permanent basis, the Department will conduct a site review within two (2) weeks of receipt of the notification. Included with the notification required under Subsection 202.01.a. of these rules, the agency must provide: ( )

i. Evidence of review and approval by the local fire and building authorities, including issuance of occupancy permit; and ( )

ii. A checklist that verifies compliance with the ADA requirements in accordance

with Section 500 of these rules. ( )

**02. Change in Geographic Service Area**. The DDA must notify the Department at least thirty (30) days prior to any anticipated change(s) in the geographic service area. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change(s). An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**203. ISSUANCE OF CERTIFICATE.**

**01. Certificate**. ( )

**a.** Initial Certification. When the Department determines that all application requirements have been met, a certificate is issued for a period of up to six (6) months from the initiation of services. During this period, the Department evaluates the agency's ongoing capability to provide services and to meet these rules. The Department will resurvey the agency prior to the end of the initial certification period. ( )

**b.** Renewal of Certificate. A certificate is issued by the Department when it determines, in accordance with the provisions of these rules, that the agency requesting certification is in substantial compliance with these rules. Agencies found to be in substantial compliance with these rules may be issued a certificate. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ( )

**02. Provisional Certificate**. When a DDA is found to be *out of* substantial compliance with these rules but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If so, then certification will be granted. If not, the certificate will be denied or revoked. ( )

**03. Return of Certificate**. The certificate is the property of the state and must be returned to the state if it is revoked or suspended. ( )

**04. Certificate Not Transferable**. The certificate is issued only to the agency named thereon, only for the period specified on the certificate, and only to the owners and operators as expressed on the application submitted to the Department, and may not be transferred or assigned to any other person or entity without the written permission of the Department. ( )

**05. Availability of Certificate**. The certificate must be posted in a conspicuous location in the DDA where it may be seen readily by the participants and members of the public. ( )

**204. RENEWAL AND EXPIRATION OF THE CERTIFICATE.**

**01. Renewal of Certificate**. The Department issues certificates that are in effect for a period of no greater than two (2) years. ( )

**a.** To ensure that there is no lapse in certification, an agency must request renewal of its certificate no less than ninety (90) days before the expiration date of the certificate. The request must contain *any changes in optional services provided and* outcomes of the internal quality assurance processes in accordance with Section 900 of these rules. ( )

**b.** Each agency seeking renewal of its certificate must *be surveyed* by the Department. ( )

**c.** The Department must find an agency to be in substantial compliance with these rules in order to renew the certificate. ( )

**02. Expiration Without Timely Request for Renewal**. Expiration of a certificate without a timely request for renewal automatically rescinds all rights or privileges the agency previously had to deliver services under these rules. ( )

**205. -- 299. (RESERVED).**

## RULE ENFORCEMENT PROCESS AND REMEDIES
## (Sections 300 Through 399)

**300. ENFORCEMENT PROCESS.**

**01. Recommendation of Remedy**. In determining which remedy or remedies to recommend, the Department will consider the DDA's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, the integrity of the program, and the potential risk to participants. Subject to these considerations, the Department may impose, as warranted, any of the remedies described in Subsection 300.02 of this rule. ( )

**02. Enforcement Remedies**. If the Department finds that a DDA has not met a rule governing developmental disabilities agencies, it may impose any of the following remedies in accordance with Subsection 300.01 of these rules, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal: ( )

**a.** Require the DDA to complete a plan of correction; ( )

**b.** Issue a provisional certificate with a specific date for correcting deficient practices; ( )

**c.** Ban enrollment of all participants with specified diagnoses; ( )

**d.** Ban any new enrollment of participants; ( )

**e.** Revoke the DDA's certificate; or ( )

**f.** Summarily suspend the certificate and transfer participants. ( )

**03. Immediate Jeopardy**. If the Department finds that the DDA's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the DDA's certificate. ( )

**04. No Immediate Jeopardy**. If the Department finds that the DDA's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 300.02.a. through 300.02.e. of this rule. ( )

**05. Repeat Deficiencies**. If the Department finds a repeat deficiency in a DDA, it may impose any of the remedies listed in Subsection 300.02 of this rule, as warranted. The Department may monitor the DDA on an "as needed" basis, until the DDA has demonstrated to the Department's satisfaction that it is in compliance with all requirements governing DDAs and that it is likely to remain in compliance. ( )

**06. Failure to Comply**. *The Department may impose one (1) or more of the remedies specified in Subsection 300.02 of this rule* if*:* *( )*

***a.*** *The* DDA has not complied with any requirement *in these rules* within three (3) months after the date *it was notified of its failure to comply* with such requirement*;* or *( )*

***b.*** *The DDA has failed to correct the deficiencies* stated in the DDA's accepted plan of correction and *as verified by* the Department, via resurveys. ( )

**301. REVOCATION OF CERTIFICATE.**

**01. Revocation of the DDA's Certificate**. The Department may revoke a DDA's certificate when persuaded by *the* preponderance of the evidence that the DDA is not in substantial compliance with the requirements in this chapter of rules. ( )

**02. Causes for Revocation of the Certificate**. The Department may revoke any DDA's certificate for any of the following causes: ( )

**a.** The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; ( )

**b.** The agency is not in substantial compliance with these rules; ( )

**c.** When persuaded by a preponderance of the evidence that conditions exist in the agency that endanger the health or safety of any participant; ( )

**d.** Any act adversely affecting the welfare of participants is being permitted, aided, performed, or abetted by the person or persons supervising the provision of services in the agency. Such acts may include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; ( )

**e.** The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or wellbeing of participants; ( )

**f.** The agency has failed to comply with any of the conditions of a provisional certificate; ( )

**g.** The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; ( )

**h.** An accumulation of minor deficiencies that, when considered as a whole indicate that the agency is not in substantial compliance with these rules; ( )

**i.** Repeat *deficiencies* by the agency of any requirement of these rules or of the Idaho Code; ( )

**j.** The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency; ( )

**k.** The agency is not in substantial compliance with the provisions for services required in this rule or with participants' rights outlined in Section 905; or ( )

**l.** The certificate holder refuses to allow the Department or Protection and Advocacy agencies full access to the agency environment, agency records, or the participants. ( )

**302. NOTICE OF ENFORCEMENT REMEDY.**
The Department will notify the following of the imposition of any enforcement remedy on a DDA: ( )

**01. Notice to DDA**. The Department will notify the DDA in writing, transmitted in a manner that will reasonably ensure timely receipt; ( )

**02. Notice to Public**. The Department will notify the public by sending the DDA printed notices to post. The DDA must post all the notices on the premises of the DDA in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department; and ( )

**03. Notice to the Professional Licensing Boards**. The Department will notify professional licensing boards, as appropriate. ( )

**303. HEARING RIGHTS.**
A DDA may request a hearing following any enforcement action taken by the Department, in accordance with Section 003 of these rules. ( )

**304. -- 399. (RESERVED).**

## STAFFING REQUIREMENTS AND PROVIDER QUALIFICATIONS
## (Sections 400 Through 499)

### 400. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.

**01. Administrative Staffing**. Each DDA must have an agency administrator who is accountable for all service elements of the agency and *who* must be employed on a continuous and regularly scheduled basis. *The agency administrator is accountable for the overall operations of the agency including assuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program.* ( )

**a.** When the administrator is not a Developmental Specialist as defined in these rules, the DDA must employ a Developmental Specialist on a continuous and regularly scheduled basis who is responsible for the service elements of the agency; and ( )

**b.** The Developmental Specialist responsible for the service elements of the agency must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. ( )

**02. Professionals**. The agency must have available, at a minimum, the following personnel, qualified in accordance with Section 420 of these rules, as employees of the agency or through formal written agreement: ( )

**a.** Speech-language pathologist or audiologist; ( )

**b.** Developmental Specialist; ( )

**c.** Occupational therapist; ( )

**d.** Physical therapist; ( )

**e.** Psychologist; and ( )

**f.** Social worker, or other professionals qualified to provide the required services under the scope of their license. ( )

***03. Records of Licenses or Certifications****. The agency must maintain documentation of the staff qualifications required under Section 420 of these rules, including copies of applicable licenses and certificates.* *( )*

**04. Parents of Participants**. A DDA may not hire the parent of a participant to provide services to the parent's minor or adult child. ( )

### 401. -- 404. (RESERVED).

**405. STANDARDS FOR PARAPROFESSIONALS PROVIDING DEVELOPMENTAL THERAPY AND IBI.**
When a paraprofessional provides either developmental therapy or IBI, the agency must assure adequate supervision by a qualified professional during its service hours. All paraprofessionals must meet the training requirements under Section 415 of these rules and must meet the qualifications under Section 420 of these rules. A paraprofessional providing IBI must be supervised by an IBI professional; a paraprofessional providing developmental therapy must be supervised by a Developmental Specialist. Paraprofessionals providing developmental therapy to children birth to three (3) must work under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. For paraprofessionals to provide developmental therapy or IBI in a DDA, the agency must adhere to the following standards: ( )

**01. Limits to Paraprofessional Activities**. The agency must assure that paraprofessionals do not conduct participant assessments, establish a plan of service, develop a Program Implementation Plan, or conduct collateral contact or IBI consultation. These activities must be conducted by a professional qualified to provide the service. ( )

**02. Frequency of Supervision**. The agency must assure that a professional qualified to provide the service must, for all paraprofessionals under his supervision, on a weekly basis or more often if necessary: ( )

**a.** Give instructions; ( )

**b.** Review progress; and ( )

**c.** Provide training on the program(s) and procedures to be followed. ( )

**03. Professional Observation**. The agency must assure that a professional qualified to provide the service must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional under his supervision, to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ( )

**04. Limitations to Service Provision by an IBI Paraprofessional**. IBI provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time, per individual participant. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide and direct the provision of IBI. ( )

**406. -- 414. (RESERVED).**

**415. GENERAL TRAINING REQUIREMENTS FOR DDA STAFF.**

**01. Yearly Training**. The DDA must ensure *that each developmental specialist, IBI professional, paraprofessional, or volunteer who provides a DDA service completes* a minimum of twelve (12) hours of formal training each calendar year. ( )

**a.** Each agency employee providing services to participants must participate in fire

and safety training upon employment and at least yearly thereafter; and ( )

**b.** Each agency employee providing services to participants must be certified in CPR and first aid within ninety (90) days of hire and maintain current certification thereafter. *( )*

*i.* The agency must assure that CPR and first aid trained staff are present or accompany participants when services or DDA-sponsored activities are being provided. *( )*

*ii.* *Each agency staff person* must have the appropriate CPR *and* first aid certification for the participants he serves. ( )

**c.** Direct service staff must be trained to meet any special health or medical requirements of the participants they serve. ( )

**02. Sufficient Training**. Training of all professional and direct service staff and volunteers must include the following as applicable to their work assignments and responsibilities: ( )

**a.** Correct and consistent implementation of all participants' individual program plans and implementation plans, to achieve individual objectives; ( )

**b.** Optimal independence of all *participants* is encouraged, supported and reinforced through appropriate activities, opportunities, and training; ( )

**c.** Correct and appropriate use of assistive technology used by *participants*; ( )

**d.** Accurate record keeping and data collection procedures; ( )

**e.** Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques; ( )

**f.** Adequate observation, review and monitoring of staff, volunteer and participant performance to promote the achievement of participant objectives; ( )

**g.** Each participant's rights, advocacy resources, confidentiality, safety and welfare; and ( )

**h.** The proper implementation of all policies and procedures developed by the agency. ( )

**03. Additional Training Requirements for IBI Professionals and IBI Paraprofessionals**. Qualified IBI professionals and IBI paraprofessionals must complete and pass a Department-approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of IBI and ethical standards. Specifically, the curriculum must include: ( )

**a.** Assessment of individuals; ( )

**b.** Behavioral management; ( )

**c.** Services or treatment of individuals; ( )

**d.** Supervised practical experience; and ( )

**e.** Successful completion of a student project that includes an observation of demonstrated competencies *for all individuals applying for initial certification or recertification after July 1, 2003*. ( )

**04. Continuing Training Requirements for IBI Professionals and IBI Paraprofessionals**. As described in Subsection 415.01 of these rules, each IBI professional and IBI paraprofessional, in order to maintain certification, must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. ( )

**a.** The initial IBI certification training meets the yearly training requirement for the calendar year in which the IBI professional or paraprofessional was first certified. ( )

**b.** If the individual has not completed the required training during any yearly training period, he may not provide IBI services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. ( )

**c.** An individual may remain IBI certified, despite being unable to bill for services, through two (2) consecutive annual training periods during which that individual has deficient training hours. A DDA may begin billing for the certified IBI Professional or Paraprofessional again after the required training hours are accumulated. ( )

**d.** If an individual completes three (3) consecutive annual training periods without having accumulated sufficient training to satisfy the training requirement for the first of those periods, that individual's IBI certification is automatically rescinded and will no longer be recognized. To be recertified, the individual must retake the state IBI exam and complete the IBI Student Project, if not previously completed. ( )

**416. -- 419. (RESERVED).**

**420. STAFF WHO ARE QUALIFIED TO PROVIDE SERVICES FOR AGENCIES.**

**01. Audiologist, Licensed**. A person licensed to conduct hearing assessment and therapy, in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who either possesses a certificate of clinical competence in audiology from the American Speech, Language and Hearing Association (ASHA) or will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. ( )

**02. Counselor, Licensed Clinical Professional**. A person licensed to practice as a clinical professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists". ( )

**03. Counselor, Licensed Professional**. A person licensed to practice as a professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists". ( )

**04. Marriage and Family Therapist**. *( )*

***a.*** *Licensed Marriage and Family Therapist.* A person licensed to practice as a marriage and family therapist in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists". ( )

***b.*** *Registered Marriage and Family Therapist Intern. A person registered to practice as a marriage and family therapist intern under the direct supervision of a Licensed Marriage and Family Therapist, in accordance with Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists".* *( )*

**05. Developmental Specialist for Adults**. To be qualified as a Developmental Specialist for adults, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with individuals who have developmental disabilities and either: ( )

**a.** Possess a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation; or ( )

**b.** Possess a bachelor's or master's degree in an area not listed above in Subsection 420.05.a. of this rule and have: ( )

i. Completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies that relates to the job requirements of a Developmental Specialist; and ( )

ii. Passed a competency examination approved by the Department. ( )

**c.** Any person employed as a Developmental Specialist in Idaho prior to May 30, 1997, unless previously disallowed by the Department, will be allowed to continue providing services as a Developmental Specialist as long as there is not a gap of more than three (3) years of employment as a Developmental Specialist. ( )

**06. Developmental Specialist for Children Three through Seventeen**. A Developmental Specialist providing developmental assessment and therapy services to children

ages three (3) through seventeen (17) must meet the requirements for a Developmental Specialist for adults, and must also meet the following requirements: ( )

**a.** *Successfully c*omplete a competency course approved by the Department that relates to developmental assessment and therapy for children; and ( )

**b.** Pass a competency examination approved by the Department. ( )

**07. Developmental Therapy Paraprofessionals Delivering Services to Participants Age Three and Older**. Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children age (3) and older if they are under the supervision of a Developmental Specialist. A developmental therapy paraprofessional must be at least seventeen (17) years of age. ( )

**08. Developmental Specialist for Children Birth to Three**. ( )

**a.** To provide developmental assessments and therapy to children birth to three (3) years of age, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: ( )

i. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or ( )

*ii. A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; ( )*

ii*i*. A bachelor's or master's degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: ( )

(1) Promotion of development and learning for children from birth to three (3) years; ( )

(2) Assessment and observation methods for developmentally appropriate assessment of young children; ( )

(3) Building family and community relationships to support early interventions;( )

(4) Development of appropriate curriculum for young children, including IFSP and IEP development; ( )

(5) Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and ( )

(6) Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. ( )

**b.** *E*lectives *closely related to the content under Subsection 420.08.a.iii.* may be approved by the Department with a recommendation from an institution of higher education. ( )

**c.** Developmental specialists who possess a bachelor's or master's degree listed above under Subsection 420.08.a.ii. of this rule, have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services *in accordance with their approved, conditional hiring agreement*. ( )

**d.** When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: ( )

i. The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. ( )

ii. Satisfactory progress will be determined on an annual review by the Department. ( )

iii. Individuals who have an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as they demonstrate satisfactory progress on the plan and complete the requirements on the plan within three (3) years of their date of hire. ( )

**09. Developmental Therapy Paraprofessionals Delivering Services to Children Birth to Three**. Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children birth to three (3) years of age if they are under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. Developmental therapy paraprofessionals serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )

**a.** Be at least eighteen (18) years of age; ( )

**b.** Be a high school graduate or have a GED; and ( )

**c.** Have transcripted courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) *semester* credits *from an accredited college or university* in child development, special education or closely-related coursework; or ( )

**d.** Have three (3) years of documented experience providing care to infants, toddlers, or children *less than* five (5) years of age *with developmental delays or disabilities* under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. ( )

**10. Intensive Behavioral Intervention (IBI) Professional Delivering Services to Participants Three to Twenty-One**. A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: ( )

**a.** Degree. A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science or counseling field from a nationally accredited university or college. ( )

**b.** Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )

**c.** Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under Section 415 of these rules. ( )

**11. IBI Paraprofessionals Delivering Services to Participants Three to Twenty-One**. A certified IBI paraprofessional may be used to provide IBI under the supervision of a certified IBI professional and must comply with Section 405 of these rules. An IBI paraprofessional must also: ( )

**a.** Be at least eighteen (18) years of age; ( )

**b.** Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )

**c.** Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under Section 415 of these rules. ( )

**12. IBI Professionals Delivering Services to Children Birth to Three**. A person qualified to provide or direct the provision of IBI to children under three (3) years of age must meet the staff qualifications described under Subsections 420.08.a.ii through 420.08.d. and 420.10.b. through 420.10.d. of these rules and the certification and training requirements above under Subsections 415.03 and 415.04 of these rules. ( )

**13. IBI Paraprofessionals Delivering Services to Children Birth to Three**. Paraprofessionals serving infants and toddlers from birth to three (3) years of age must meet the

following qualifications: ( )

**a.** Be at least eighteen (18) years of age; ( )

**b.** Be a high school graduate or have a GED; and ( )

**c.** Have transcripted courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) credits in child development, special education or closely-related coursework; or ( )

**d.** Have three (3) years of documented experience providing care to infants, toddlers or children under five (5) years of age under the supervision of a child development professional, certified educator, or licensed therapist or Developmental Specialist. ( )

**e.** Qualified IBI professionals and paraprofessionals must comply with the requirements under Section 415 of these rules. ( )

**14. Nurse Practitioner**. A licensed professional nurse (RN) who has met all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". ( )

**15. Occupational Therapist**. A person qualified to conduct occupational therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants". ( )

**16. Physical Therapist**. A person qualified to conduct physical therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.05, "Licensure of Physical Therapists Idaho State Board of Medicine and Physical Therapist Assistants". ( )

**17. Physician**. A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code. ( )

**18. Physician Assistant**. A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: ( )

**a.** Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or ( )

**b.** Has satisfactorily completed a program for preparing physician's assistants that: ( )

i. Was at least one (1) academic year in length; and ( )

ii. Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health care; and ( )

iii. Was accredited by the American Medical Association's Committee on Allied

Health Education and Accreditation. ( )

**19. Psychiatric Nurse, Certified**. A licensed professional nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. ( )

**20. Psychiatrist**. A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code, and who meets the requirements for certification in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. ( )

**21. Psychologist**. A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". ( )

**22. Psychologist Extender**. A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. ( )

**23. Social Worker, Licensed**. A person licensed in accordance with the Social Work Licensing Act, Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners". ( )

**24. Masters Social Worker, Licensed**. A person who is licensed as a masters social worker (LMSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners". ( )

**25. Clinical Social Worker, Licensed**. A person who is licensed as a clinical social worker (LCSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners". ( )

**26. Speech-Language Pathologist, Licensed**. A person licensed to conduct speech-language assessment and therapy in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who possesses a certificate of clinical competence in speech-language pathology from the American Speech, Language and Hearing Association (ASHA) or who will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. ( )

**421. VOLUNTEER WORKERS IN A DDA.**
If volunteers are utilized by a DDA, the agency must establish written policies and procedures governing the screening, training, and utilization of volunteer workers. ( )

**422. -- 499. (RESERVED).**

## FACILITY, SAFETY, AND HEALTH STANDARDS
## (Sections 500 Through 599)

**500. FACILITY STANDARDS FOR AGENCIES PROVIDING CENTER-BASED SERVICES.**
The requirements in Section 500 of these rules, apply when an agency is providing center-based services. ( )

**01. Accessibility**. Agencies designated under these rules must be responsive to the needs of persons receiving services and accessible to persons with disabilities as defined in Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (ADA), and the uniform federal accessibility standard. The DDA must submit a completed checklist to the Department to verify compliance with the ADA requirements. This checklist must be provided to the Department with the application for certification. ( )

**02. Environment**. The facilities of the agency must be designed and equipped to meet the needs of each participant including factors such as sufficient space, equipment, lighting and noise control. ( )

**03. Fire and Safety Standards**. ( )

**a.** Buildings on the premises must meet all local and state codes concerning fire and life safety that are applicable to a DDA. The owner or operator of a DDA must have the center inspected at least annually by the local fire authority and as required by local city or county ordinances. In the absence of a local fire authority, such inspections must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection must be made available to the Department upon request and must include documentation of any necessary corrective action taken on violations cited; ( )

**b.** There must be written policies and procedures covering the protection of all persons in the event of fire and other emergencies; ( )

**c.** On the premises where natural or man-made hazards are present, suitable fences, guards or railings must be provided to protect participants; ( )

**d.** The premises must be kept free from the accumulation of weeds, trash and rubbish; and ( )

**e.** Portable heating devices are prohibited except those units that have heating elements that are limited to not more than two hundred twelve degrees Fahrenheit (212°F). The use of unvented, fuel-fired heating devices of any kind is prohibited. All portable space heaters must be approved by Underwriters Laboratories as well as approved by the local fire or building authority and covered in the local fire or building inspections; and ( )

**f.** All hazardous or toxic substances must be properly labeled and stored under lock and key; and ( )

**g.** Water temperatures in areas accessed by participants must not exceed one hundred twenty degrees Fahrenheit (120°F); and ( )

**h.** There must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers must be posted near the telephone. ( )

**04. Evacuation Plans**. Evacuation plans must be posted throughout the center. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building. ( )

**a.** The DDA must conduct quarterly fire drills. At least two (2) times each year these fire drills must include complete evacuation of the building. *The DDA must document the amount of time it took to evacuate the building*; and ( )

**b.** A brief summary of each fire drill conducted must be written and maintained on file. The summary must indicate the date and time the drill occurred, problems encountered, and corrective action(s) taken. ( )

**05. Food Safety and Storage**. ( )

**a.** When the agency provides food service for participants and meets the definition of a "food establishment," in Section 39-1602, Idaho Code, the agency must comply with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments". Compliance is verified through inspection by the local District Health Department. Meals prepared or provided by the agency must be nutritious. ( )

**b.** When the agency does not provide food service for participants, it must keep refrigerators and freezers used to store participant lunches and other perishable foods in good repair and equipped with an easily readable thermometer. Refrigerators must be maintained at forty-one degrees Fahrenheit (41°F) or below. Freezers must be maintained at ten degrees Fahrenheit (10°F) or below. ( )

**c.** When medicines requiring refrigeration are stored in a food refrigerator, medicines must be stored in a package and kept inside a covered, leak proof container that is clearly identified as a container for the storage of medicines. ( )

**06. Housekeeping and Maintenance Services**. ( )

**a.** The interior and exterior of the center must be maintained in a clean, safe and orderly manner and must be kept in good repair; ( )

**b.** Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; ( )

**c.** The center must be maintained free from infestations of insects, rodents and other pests; and ( )

**d.** The center must maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means. ( )

**501. VEHICLE SAFETY REQUIREMENTS.**
Each DDA that transports participants must: ( )

**01. Preventative Maintenance Program**. Establish a preventive maintenance program for each agency-owned or leased vehicle, including vehicle inspections and other regular maintenance to insure participant safety. ( )

**02. Transportation Safety Policy**. Develop and implement a written transportation safety policy. ( )

**03. Licenses and Certifications for Drivers and Vehicles**. Obtain and maintain licenses and certifications for drivers and vehicles required by public transportation laws, regulations, and ordinances that apply to the agency to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. ( )

**04. Applicable Laws, Rules, and Regulations**. Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. ( )

**05. Liability Insurance**. Continuously maintain liability insurance that covers all passengers and meets the minimum liability insurance requirements under Idaho law. If an agency employee transports participants in the employee's personal vehicle, the agency must ensure that adequate liability insurance coverage is carried to cover those circumstances. ( )

**502. -- 509. (RESERVED).**

**510. HEALTH REQUIREMENTS.**

**01. Required Health Policies and Procedures**. Each DDA must develop policies and procedures that: ( )

**a.** Describe how the agency will assure that staff is free from communicable disease; ( )

**b.** Describe how the agency will protect participants from exposure to individuals exhibiting symptoms of illness. ( )

**c.** Address any special medical or health care needs of particular participants being served by the agency. ( )

**02. Services that Require Licensed Professionals**. Some services are of such a technical nature that they must always be performed by, or under the supervision of, a licensed nurse or other licensed health professional. The agency must assure that all such care is provided within the scope of the care provider's training and expertise. These limitations are outlined in IDAPA 23.01.01, “Rules of the Idaho Board of Nursing,” Section 490. ( )

**03. Employees**. Each employee with direct contact with participants must be free of communicable disease and infected skin lesions while on duty. ( )

**04. Incident Reports**. Each DDA must complete incident reports for all accidents, injuries, or other events that endanger a participant. Each report must document that the adult participant's legal guardian, if he has one, or, in the case of a minor, the minor's parent or legal guardian, has been notified or that the participant's care provider has been notified if the participant or the participant's parent or legal guardian has given the agency permission to do so. A documented review of all incident reports must be completed at least annually with written recommendations. These reports must be retained by the agency for five (5) years. ( )

**511. MEDICATION STANDARDS AND REQUIREMENTS.**

**01. Medication Policy**. Each DDA must develop written medication policies and procedures that outline in detail how the agency will assure appropriate handling and safeguarding of medications. An agency that chooses to assist participants with medications must also develop specific policies and procedures to assure this assistance is safe and is delivered by qualified, fully-trained staff. Documentation of training must be maintained in the staff personnel file. ( )

**02. Handling of Participant's Medication**. ( )

**a.** The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately, unless in a Mediset, blister pack, or similar system. ( )

**b.** Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the participant's record. Medisets filled and labeled by a pharmacist or licensed nurse can serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use can also serve as written evidence of an order from the physician or other practitioner of the healing arts. ( )

**c.** The agency is responsible to safeguard the participant's medications while the participant is at the agency or in the community. ( )

**d.** Medications that are no longer used by the participant must not be retained by the agency or agency staff for longer than thirty (30) calendar days. ( )

**03. Self-Administration of Medication**. When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a *physician or other practitioner of the healing arts,* licensed nurse, or other qualified professional has evaluated the participant's ability to self-administer medication and has found that the participant: ( )

**a.** Understands the purpose of the medication; ( )

**b.** Knows the appropriate dosage and times to take the medication; ( )

**c.** Understands expected effects, adverse reactions or side effects, and action to take in an emergency; and ( )

**d.** Is able to take the medication without assistance. ( )

**04. Assistance with Medication**. An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place: ( )

**a.** Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program, a course approved by the Idaho State Board of Nursing, or other Department-approved training; ( )

**b.** The participant's health condition is stable; ( )

**c.** The participant's health status does not require nursing assessment*, as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing,"* before receiving the medication nor nursing assessment of the therapeutic or side effects after the medication is taken; ( )

**d.** The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; ( )

**e.** Written and oral instructions from a licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; ( )

**f.** Written instructions are in place that outline required documentation of assistance and who to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; ( )

**g.** Procedures for disposal or destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course. ( )

**05. Administration of Medications**. Only a licensed nurse or another licensed health professional working within the scope of his license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". ( )

**512. -- 519. (RESERVED).**

**520. SETTING REQUIREMENTS FOR AGENCIES DELIVERING COMMUNITY-BASED SERVICES.**
The requirements in Section 520 of these rules apply when a DDA is providing community-based services. ( )

**01. Accessibility**. The community-based setting must be accessible, safe, and appropriate for each participant. ( )

**02. Environment**. The community-based setting must be designed and equipped to meet the needs of each participant including factors such as sufficient space, equipment, lighting, and noise control. ( )

**03. Training Group Session Size**. The community-based services must occur in integrated, inclusive settings and with no more than three (3) participants per trainer at each training session. ( )

**04. Image Enhancement**. The community-based services must enhance each participant's social image, personal competencies, and promote inclusion in the community. ( )

**521. -- 599. (RESERVED).**

**REQUIRED ASSESSMENTS FOR DELIVERY OF DDA SERVICES**
**(Sections 600 through 699)**

**600. COMPREHENSIVE ASSESSMENTS CONDUCTED BY THE DDA.**
Assessments must be conducted by qualified professionals defined under Section 420 of these rules for the respective discipline or areas of service. ( )

**01. Comprehensive Assessments**. A comprehensive assessment must: ( )

**a.** Determine the necessity of the service; ( )

**b.** Determine the participant's needs; ( )

**c.** Guide treatment; ( )

**d.** Identify the participant's current and relevant strengths, needs, and interests when these are applicable to the respective discipline; and ( )

**e.** For medical or psychiatric assessments, formulate a diagnosis. For psychological assessments, formulate a diagnosis and recommend the type of therapy necessary to address the participant's needs. For other types of assessments, recommend the type and amount of therapy necessary to address the participant's needs. ( )

**02. Current Assessments Required**. When the DDA determines developmental

disabilities eligibility, current assessments must be completed or obtained as necessary. ( )

**03. Date, Signature, and Credential Requirements**. Assessments must be signed and dated by the professional completing the assessment and include the appropriate professional credential or qualification of that person. ( )

**04. Assessment Must Be Completed Within Forty-Five Days**. *( )*

***a.*** *With the exception noted under Subsection 600.04.b. of this rule, e*ach assessment must be completed within forty-five (45) calendar days of the date it was recommended by the physician or other practitioner of the healing arts. If the assessment is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. ( )

***b.*** *This forty-five (45) day requirement does not apply to participant plans of service authorized under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". ( )*

**601. GENERAL REQUIREMENTS FOR ASSESSMENT RECORDS.**

**01. Completion of Assessments**. Assessments must be completed or obtained prior to the delivery of therapy in each type of service. ( )

**02. Update of Assessments**. Assessments or updates are required in disciplines in which services are being delivered and when recommended by a professional. ( )

**03. Psychological Assessment**. A current psychological assessment must be completed or obtained: ( )

**a.** When the participant is receiving a behavior modifying drug(s); ( )

**b.** Prior to the initiation of restrictive interventions to modify inappropriate behavior(s); ( )

**c.** When it is necessary to determine eligibility for services or establish a diagnosis; ( )

**d.** When a participant has been diagnosed with mental illness; *or* ( )

**e.** When a child has been identified to have a severe emotional disturbance. ( )

**602. REQUIREMENTS FOR CURRENT ASSESSMENTS.**
Assessments must accurately reflect the current status of the participant. ( )

**01. Current Assessments for Ongoing Services**. To be considered current, assessments must be completed or updated at least annually for service areas in which the participant is receiving services on an ongoing basis. ( )

**02. Updated Assessments**. At the time of the required review of the assessment(s),

the qualified professional in the respective discipline must determine whether a full assessment or an updated assessment is required for the purpose of reflecting the participant's current status in that service area. If, during the required review of the assessment(s), the latest assessment accurately represents the status of the participant, the file must contain documentation from the professional stating so. ( )

**03. Medical/Social Histories and Medical Assessments**. Medical/social histories and medical assessments must be completed at a frequency determined by the recommendation of a professional qualified to conduct those assessments. ( )

**04. Intelligence Quotient (IQ) Tests**. Once initial eligibility has been established, annual assessment of IQ is not required for persons whose categorical eligibility for DDA services is based on a diagnosis of mental retardation. IQ testing must be reconducted on a frequency determined and documented by the agency psychologist or at the request of the Department. ( )

**603. ASSESSMENTS FOR ADULTS.**

DDAs must obtain assessments required under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". All specific skill assessments must be conducted in accordance with Section 605 of these rules. ( )

**604. TYPES OF COMPREHENSIVE ASSESSMENTS.**

**01. Comprehensive Developmental Assessment**. A comprehensive developmental assessment must be conducted by a qualified Development Specialist and reflect a person's developmental status in the following areas: ( )

**a.** Self-care; ( )

**b.** Receptive and expressive language; ( )

**c.** Learning; ( )

**d.** Gross and fine motor development; ( )

**e.** Self-direction; ( )

**f.** Capacity for independent living; and ( )

**g.** Economic self-sufficiency. ( )

**02. Comprehensive Intensive Behavioral Intervention (IBI) Assessment**. The requirements for the comprehensive IBI assessment are found under Section 802 of these rules. ( )

**03. Occupational Therapy Assessment**. Occupational therapy assessments must be conducted by an occupational therapist qualified under Section 420 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the

participant's needs. ( )

**04. Physical Therapy Assessment**. Physical therapy assessments must be conducted by a physical therapist qualified under Section 420 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. ( )

**05. Speech and Language Assessment**. Speech and language assessments must be conducted by a Speech-Language Pathologist who is qualified under Section 420 of these rules. ( )

**06. Medical Assessments**. Medical assessments must be completed by a physician or other practitioner of the healing arts who is qualified in accordance with Section 420 of these rules and accurately reflects the current status and needs of the person. ( )

**07. Medical/Social History**. Medical/social histories must be completed by a licensed social worker or other qualified professional working within the scope of his license. The medical/social history is a narrative report that must include: ( )

**a.** Medical history including age of onset of disability, prenatal and postnatal birth issues, other major medical issues, surgeries, and general current health information; ( )

**b.** Developmental history including developmental milestones and developmental treatment interventions; ( )

**c.** Personal history including social functioning/social relationships, recreational activities, hobbies, any legal and criminal history, and any history of abuse; ( )

**d.** Family history including information about living or deceased parents and siblings, family medical history, relevant family cultural background, resources in the family for the participant; ( )

**e.** Educational history including any participation in special education; ( )

**f.** Prevocational or vocational paid and unpaid work experiences; ( )

**g.** Financial resources; and ( )

**h.** Recommendation of services necessary to address the participant's needs. ( )

**08. Hearing Assessment**. A hearing assessment must be conducted by an audiologist who is qualified under Section 420 of these rules. ( )

**09. Psychological Assessment**. A psychological assessment includes psychological testing for diagnosis and assessment of personality, psychopathology, emotionality, or intellectual abilities (IQ test). The assessment must include a narrative report. *Psychological assessment encompasses psychological testing and the psychiatric diagnostic interview.* ( )

***a.*** Psychological Testing. Psychological testing refers to any measurement procedure

for assessing psychological characteristics in which a sample of a person's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments.( )

*i*. Psychological testing may be provided when in direct response to a specific assessment question. ( )

*i*i. The psychological report must contain the reason for the performance of this service. ( )

*ii*i. Agency staff may deliver this service if they meet one (1) of the following qualifications: ( )

*(1)* Licensed Psychologist; ( )

*(2)* Psychologist Extender; or ( )

*(3)* A qualified therapist listed in Subsection 712.02 of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. ( )

***b.*** Psychiatric Diagnostic Interview. A psychiatric diagnostic interview must be conducted in accordance with Section 722 of these rules. ( )

**605. REQUIREMENTS FOR SPECIFIC SKILL ASSESSMENTS.**
Specific skill assessments must: ( )

**01. Further Assessment**. Further assess an area of limitation or deficit identified on a comprehensive assessment. ( )

**02. Related to a Goal**. Be related to a goal on the IPP, ISP, or IFSP. ( )

**03. Conducted by Qualified Professionals**. Be conducted by qualified professionals for the respective disciplines as defined in this chapter. ( )

**04. Determine a Participant's Skill Level**. Be conducted for the purposes of determining a participant's skill level within a specific domain. ( )

**05. Determine Baselines**. Be used to determine baselines and develop the program implementation plan. ( )

**606. -- 699. (RESERVED).**

## GENERAL REQUIREMENTS FOR THE DELIVERY OF DDA SERVICES (Sections 700 through 709)

**700. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO PERSONS EIGHTEEN YEARS OF AGE OR OLDER AND ISSH WAIVER PARTICIPANTS.**
Section 700 of these rules does not apply to adults who receive *IBI or additional DDA* services *prior authorized* under *the* Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) *program as described in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program"*. DDAs must comply with the requirements under Section 701 of these rules for *those* adults. ( )

**01. Eligibility Determination**. Prior to the delivery of any DDA services, the person must be determined to be eligible as defined under Section 66-402, Idaho Code, for DDA services. ( )

**a.** For persons seeking Medicaid-funded DDA services who are eighteen (18) years of age or older, or are ISSH Waiver participants, the Department or its designee determines eligibility for services. ( )

**b.** For persons eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 701.01 of these rules. ( )

**02. Intake**. ( )

**a.** For participants eighteen (18) years of age or older or who are ISSH Waiver Participants, and who are not listed under Subsection 700.02.b., prior to the delivery of any Medicaid-funded DDA services: ( )

i. The Department or its designee will have provided the DDA with current medical, social, and developmental information; and ( )

ii. The participant must have an ISP that is authorized in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". ( )

**b.** Participants eighteen (18) years of age or older receiving DDA services and who are using the Home and Community Based Services (HCBS) Waiver for the Aged and Disabled (A&D), State Plan PCS, or are living in a nursing facility must: ( )

i. Have DDA services prior authorized by the Department or its designee; and( )

ii. DDAs must complete an Individual Program Plan (IPP) that meets the standards described in Subsections 701.04 through 701.06 of these rules. IPPs for these individuals do not require the signature of a physician or other practitioner of the healing arts. ( )

**c.** For participants eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 701.02 of these rules. ( )

**03. Assessments**. Requirements for assessments are found under Sections 600 through 605 of these rules. ( )

**04. Individual Service Plan (ISP)**. For participants eighteen (18) years of age or older or for ISSH Waiver participants, any services provided by the DDA must be included on the plan of service and be prior authorized by the Department or its designee before a participant can receive the service from the agency. ( )

**05. Documentation of Plan Changes**. Documentation of changes in the required plan of service or Program Implementation Plan must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to a Program Implementation Plan that affect the type or amount of service on the plan of service, an addendum to the plan of service must be completed. ( )

**701. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN AGES THREE THROUGH SEVENTEEN AND ADULTS RECEIVING *IBI OR ADDITIONAL DDA SERVICES PRIOR AUTHORIZED UNDER THE* EPSDT *PROGRAM*.**
Section 701 of these rules does not apply to participants receiving ISSH Waiver services. DDAs must comply with the requirements under Section 700 of these rules for all ISSH Waiver participants. ( )

**01. Eligibility Determination**. Prior to the delivery of any DDA services, the DDA must determine *and document* the participant's eligibility in accordance with Section 66-402, Idaho Code. For eligibility determination, the following assessments must be obtained or completed by the DDA: ( )

**a.** Medical Assessment. This must contain medical information that accurately reflects the current status of the person and establishes *categorical* eligibility in accordance with Section 66-402(5)(a), Idaho Code; or ( )

**b.** Psychological Assessment. If the medical assessment does not establish *categorical* eligibility, the DDA must obtain or conduct a psychological assessment that accurately reflects the current status of the person and establishes *categorical* eligibility in accordance with Section 66-402(5)(a), Idaho Code. ( )

**c.** *Standardized Comprehensive Developmental* Assessment. This must contain developmental information regarding functional limitations that accurately reflects the current status of the person and establishes *functional* eligibility *based on substantial limitations* in accordance with Section 66-402(5)(b), Idaho Code. ( )

**02. Intake**. The DDA must obtain information that accurately reflects the current status and needs of the participant prior to the delivery of services. ( )

**a.** The person must have been determined by the DDA to be eligible for DDA services. ( )

**b.** The DDA must obtain or complete a comprehensive medical and medical/social history. ( )

**03. Assessments**. Requirements for assessments are found under Sections 600 through 605 of these rules. ( )

**04. Individual Program Plan (IPP) Definitions**. The delivery of each service on a plan of service must be defined in terms of the type, amount, frequency, and duration of the service. ( )

**a.** Type of service refers to the kind of service described in terms of: ( )

i. Discipline; ( )

ii. Group, individual, or family; and ( )

iii. Whether the service is home, community, or center-based. ( )

**b.** Amount of service is the total number of service hours during a specified period of time. This is typically indicated in hours per week. ( )

**c.** Frequency of service is the number of times service is offered during a week or month. ( )

**d.** Duration of service is the length of time. This is typically *the length of the plan year. For ongoing services, the duration is one (1) year; services that end prior to the end of the plan year must have a specified end date.* ( )

**05. Individual Program Plan (IPP)**. For participants three (3) through seventeen (17) years of age who do not use ISSH Waiver services, and for adults receiving EPDST services, the DDA is required to complete an IPP. ( )

**a.** The IPP must be developed following obtainment or completion of all applicable assessments consistent with the requirements of this chapter. ( )

**b.** The planning process must include the participant and his parent or legal guardian, if applicable, and others the participant or his parent or legal guardian chooses. The participant's parent or legal guardian must sign the IPP indicating their participation in its development. The parent or legal guardian must be provided a copy of the completed IPP. If the participant and his parent or legal guardian are unable to participate, the reason must be documented in the participant's record. A physician or other practitioner of the healing arts and the parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan*, except as provided under Subsection 700.02.b.ii. of these rules*. ( )

**c.** The planning process must occur at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the participant. Revisions to the IPP requiring a change in type, amount, or duration of the service provided must be recommended by the physician or other practitioner of the healing arts prior to implementation of the change. Such recommendations must be signed by the physician or other practitioner of the healing arts and maintained in the participant's file. A parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan. ( )

**d.** The IPP must be supported by the documentation required in the participant's record under Section 705 of these rules. ( )

**e.** The IPP must promote self-sufficiency, the participant's choice in program objectives and activities, encourage the participant's participation and inclusion in the community, *and contain objectives that are age-appropriate*. The IPP must include: ( )

i. The participants name and medical diagnosis; ( )

ii. The name of the assigned Developmental Specialist, the date of the planning meeting, and the name and titles of those present at the meeting; ( )

iii. The *dated* signature of the physician or other practitioner of the healing arts indicating his recommendation of the services on the plan; ( )

iv. The type, amount, frequency and duration of therapy to be provided. For developmental therapy, the total hours of services provided cannot exceed the amount recommended on the plan. The amount and frequency of the type of therapy must not *deviate* from the *IPP* more than twenty percent (20%) over a period of a four (4) weeks, unless there is documentation of *a participant-based reason*; ( )

v. A list of the participant's current personal goals, interests and choices; ( )

vi. An accurate, current, and relevant list of the participant's specific developmental and behavioral strengths and needs. The list will identify which needs are priority based on the participant's choices and preferences. An IPP objective must be developed for each priority need; ( )

vii. A list of measurable behaviorally stated objectives, which correspond to the list of priority needs. A Program Implementation Plan must be developed for each objective; ( )

viii. The discipline professional or Developmental Specialist responsible for each objective; ( )

ix. The target date for completion of each objective; ( )

x. The review date; and ( )

xi. A transition plan. The transition plan is designed to facilitate the participant's independence, personal goals, and interests. The transition plan must specify criteria for participant transition into less restrictive, more integrated settings. These settings may include integrated classrooms, community-based organizations and activities, vocational training, supported or independent employment, volunteer opportunities, or other less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation *of* services from a DDA. ( )

**06. Documentation of Plan Changes**. Documentation of required plan of service or

Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum: ( )

**a.** The reason for the change; ( )

**b.** Documentation of coordination with other services providers, where applicable; ( )

**c.** The date the change was made; and ( )

**d.** The signature of the professional making the change complete with date, credential, and title. Changes to the IPP require documented notification of the participant or the participant's parent or legal guardian, if applicable. Changes in type, amount, or duration of services require written authorization from a physician or other practitioner of the healing arts and the participant or the participant's parent or legal guardian prior to the change. If the signatures of the participant or the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. ( )

**702. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN BIRTH TO THREE YEARS OF AGE (INFANT TODDLER).**
Services provided by a DDA to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. For children birth to age three (3), the IFSP will be used in lieu of the Individual Program Plan (IPP). ( )

**01. Eligibility Determination**. For a child birth to three (3) years of age, prior to the delivery of any DDA services: ( )

**a.** In accordance with 34 CFR 303.321(e), the Department's regional Infant Toddler Program will determine eligibility *for DDA services* in accordance with Section 66-402, Idaho Code. ( )

**b.** Upon request from the DDA, and after receiving consent from the parent or legal guardian for release of information, the Department's regional Infant Toddler Program will provide the DDA with documentation of the child's eligibility including a copy of the current IFSP, addendum(a) to the IFSP, assessments, and service records related to current *DDA* services. ( )

**02. Intake**. Prior to the delivery of DDA services: ( )

**a.** The DDA must obtain both a copy of the current IFSP and a copy of all current assessment(s) used by the Department's regional Infant Toddler Program to determine eligibility for *DDA* services; and ( )

**b.** The DDA must conduct a meeting with the child's family, in cooperation with the child's service coordinator, to review the current IFSP and confirm the family's resources, priorities, and concerns with regard to the child's current developmental status and therapeutic needs. ( )

**03. Individualized Family Service Plan (IFSP)**. The Department or its designee will develop the initial IFSP for each eligible child, birth to three (3) years of age. Each DDA that provides *DDA* services to an eligible child, birth to three (3) years of age, must implement services according to the IFSP for that child as required by the Individuals with Disabilities Education Act, (P.L. 108-446, December 2004), Part C, Section 636 (d) and Title 16, Chapter 1, Idaho Code. The DDA must use the Department-approved IFSP form in accordance with 34 CFR 303.344. The procedures for IFSP development, review, and assessment must be in accordance with 34 CFR 303.342. ( )

**a.** Development of the IFSP. For a child who has been evaluated for the first time and has been determined to be eligible for *DDA* services, the initial IFSP developed by the Department must be completed within a forty-five (45) day time period in accordance with 34 CFR 303.321(e). ( )

**b.** Periodic Reviews. In cooperation with the child's service coordinator and other service providers, the DDA must participate in a review of the IFSP to be conducted every six (6) months, or more frequently, if conditions warrant or if the family requests such a review. The purpose of the periodic review is to identify progress made toward each objective and to determine whether these current outcomes and objectives need modification or revision. The review may be carried out in a meeting or by another means that is acceptable to the parent or legal guardian and other participants. These reviews must include the degree to which progress toward achieving the outcomes is being made. ( )

i. The DDA must provide the child's service coordinator with any current assessments and other information from the ongoing assessment of the child to determine what services are needed and will be provided. ( )

ii. The DDA must identify outcomes and objectives for inclusion in the IFSP for any services to be provided through the DDA. ( )

**c.** Participants in the IFSP meetings and periodic reviews must be in accordance with 34 CFR 303.343. IFSP meetings and periodic reviews must include the parent or legal guardian, the service coordinator working with the family, persons providing direct services to the child and family as appropriate, and persons directly involved in conducting the assessments of the child. The family is encouraged to invite any family member, advocate, or friend to the meeting to assist in the planning process. ( )

**d.** The IFSP or IFSP addendum must be in accordance with 34 CFR 303.344, and include the following: ( )

i. A statement of the outcome; ( )

ii. Steps to support transitions; ( )

iii. Behaviorally-stated objectives toward meeting that outcome; ( )

iv. Frequency, intensity, and method of delivering a service to meet the outcome; ( )

v. Measurability criteria, strategies and activities; ( )

vi. Start and end dates; ( )

vii. A description of the natural environments in which early intervention services are appropriately provided, including a justification of the extent, if any, to which services will not be provided in a natural environment; and ( )

viii. A list of who will be involved in the direct intervention. ( )

**e.** There must be an order by a physician or other practitioner of the healing arts for all *DDA* services included on the IFSP. ( )

**f.** Transition to preschool programs must be in accordance with 34 CFR 303.148. ( )

i. At the IFSP review closest to the child's second birthday, outcomes must be written to address the steps needed to assure appropriate services for the child at age three (3). ( )

ii. At least six (6) months prior to the child's third birthday, the DDA must document contact with the child's service coordinator and participation in the transition planning process at the time of referral of the child to his local school district for IDEA, Part B, eligibility determination. ( )

**04. Parental Consent and Right to Decline Service**. Written parental consent must be obtained before: ( )

**a.** Conducting the assessment of a child; and ( )

**b.** Initiating the provision of services. ( )

**05. Ongoing Assessment of the Child**. The assessment of each child must: ( )

**a.** Be conducted by personnel trained to utilize appropriate methods and procedures; ( )

**b.** Be based on informed clinical opinion; and ( )

**c.** Include the following: ( )

i. A review of pertinent records related to the child's current health status and

medical history. ( )

ii. An assessment of the child's level of functioning in cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development. ( )

iii. An assessment of the unique needs of the child in terms of each of the developmental areas mentioned above in Subsection 702.05.c.ii. of this rule, including the identification of services appropriate to meet those needs. ( )

**06. Services in the Natural Environment**. Natural environments are settings that are natural or normal for the child's age peers who have no disability. To the maximum extent appropriate, in order to meet the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. ( )

**07. Documentation of Program Changes**. Documentation of required plan or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other services providers, where applicable, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to the Program Implementation Plan that affect the IFSP, an addendum to the IFSP must be completed: ( )

**a.** In cooperation with the service coordinator; ( )

**b.** With consent of the parent; ( )

**c.** With an order by the child's physician or other practitioner of the healing arts; ( )

**d.** With all changes documented on the enrollment form; and ( )

**e.** A copy of the addendum and the enrollment form must be submitted to the Department. ( )

**703. PROGRAM IMPLEMENTATION PLAN REQUIREMENTS.**
For each participant, the DDA must develop a Program Implementation Plan for each DDA objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The Program Implementation Plan must include the following *requirements in Subsections 703.01 through 703.07 of this rule*: ( )

**01. Name**. The participant's name. ( )

**02. Baseline Statement**. A baseline statement addressing the participant's skill *level* and abilities related to the specific skill to be learned. ( )

**03. Objectives**. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. ( )

**04. Written Instructions to Staff**. These instructions may include curriculum, interventions, *task analyses*, activity schedules, type and frequency of reinforcement and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. ( )

**05. Service Environments**. Identification of the type of environment(s) where services will be provided. ( )

**06. Target Date**. Target date for completion. ( )

**07. Results of the Psychological or Psychiatric Assessment**. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to assure therapies provided in the DDA accommodate the participant's mental health needs and to assure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. ( )

**08. IBI Implementation Plans**. *In addition to the requirements under Subsections 703.01 through 703.07 of these rules, the following are also required for IBI Implementation Plans:* ( )

**a.** All IBI Implementation Plans must *be* completed on the Department-approved form. ( )

**b.** On all IBI Implementation Plan cover sheets, the signature of a parent or legal guardian is required. If the signatures of the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. ( )

**704. PROGRAM DOCUMENTATION REQUIREMENTS.**
Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. ( )

**01. General Requirements for Program Documentation**. For each participant the following program documentation is required: ( )

**a.** Daily entry of all activities conducted toward meeting participant objectives. ( )

**b.** Sufficient progress data to accurately assess the participant's progress toward each objective; and ( )

**c.** A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by *the qualified professional*. The review must include the *qualified professional's* dated initials. ( )

**d.** *When a participant receives developmental therapy, d*ocumentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of *the* participant's progress toward the achievement of therapeutic goals, and why he continues to need services. ( )

**02. Additional Requirements for Participants Eighteen Years or Older and for ISSH Waiver Participants**. For participant's eighteen (18) years of age or older and ISSH Waiver Participants, DDAs must also submit provider status reviews to the plan monitor *in accordance with IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services"*. ( )

**03. Additional Requirements for Participants Seven Through Sixteen**. For participants ages seven (7) through sixteen (16), the DDA must also document that the child has been referred to the local school district in accordance with Subsection 706.01 of these rules. ( )

**04. Additional Requirements for Participants Birth to Three Years of Age**. For participants birth to age three (3), the following are required in addition to those requirements in Subsection 702.01 of these rules: ( )

**a.** Documentation of the six (6) month and annual reviews; ( )

**b.** Documentation of participation in transition planning at the IFSP developed closest to the child's second birthday to assure service continuity and access to community services as early intervention services end at age three (3); ( )

**c.** Documentation that participant rights have been met in accordance with Subsection 905.03.d.; ( )

**d.** Documentation of participation in the transition meeting with the school district; and ( )

**e.** Documentation of consultation with other service providers who are identified on the IFSP. ( )

**705. RECORD REQUIREMENTS.**

Each DDA certified under these rules must maintain accurate, current and complete participant and administrative records. These records must be maintained for at least five (5) years. Each participant record must support the individual's choices, interests, and needs that result in the type and amount of each service provided. Each participant record must clearly document the date, time, duration, and type of service*, and include the signature of the individual providing the service*, for *each* service provided. *Each* signature must be accompanied both by credentials and

the date signed. Each agency must have an integrated participant records system to provide past and current information and to safeguard participant confidentiality under these rules. ( )

**01. General Records Requirements**. Each participant record must contain the following information: ( )

**a.** An order by a physician or other practitioner of the healing arts for each DDA service the participant is receiving on an ongoing basis; ( )

**b.** Plan of service as required for the participant. ( )

**c.** Program Implementation Plans, program documentation and monitoring records that comply with all applicable sections of these rules; ( )

**d.** Current profile sheet containing the identifying information about the participant, including *residence and living arrangement,* contact information, emergency contacts, physician, current medications, allergies, special dietary or medical needs, and any other information required to provide safe and effective care; ( )

**e.** Current medical, social, and developmental information and assessments; and ( )

**f.** When assessments are completed or obtained by the agency, the participant's record must include *assessment results,* test scores *when applicable,* and narrative reports, signed with credentials and dated by the respective evaluators. ( )

**02. Case Record Organization**. The case record must be divided into program and discipline areas identified by tabs, including plan of service, medical, social, psychological, speech, and developmental, as applicable. ( )

**706. REQUIREMENTS FOR COLLABORATION WITH OTHER PROVIDERS.**
When participants are receiving rehabilitative or habilitative services from other providers, each DDA must coordinate each participant's DDA program with these providers to maximize skill acquisition and generalization of skills across environments, and to avoid duplication of services. The DDA must maintain documentation of this collaboration. This documentation includes other plans of services such as the Individual Education Plan (IEP), Personal Care Services (PCS) plan, Residential Habilitation plan, and the Psychosocial Rehabilitation (PSR) plan. The participant's file must also reflect how these plans have been integrated into the DDA's plan of service for each participant. ( )

**01. Requirements for Participants Three to Twenty-One**. ( )

**a.** For participants who are children enrolled in school, the local school district is the lead agency as required under IDEA, Part B. DDAs must inform the child's home school district if they are serving the child during the hours that school is typically in session. The participant's record must contain an Individualized Education Plan (IEP), including any recommendations for Extended School Year, if there are any. The DDA must *document that they have* provide*d* a current copy of the child's Individual Program Plan (IPP) to his school. The DDA may provide

additional services beyond those that the school is obligated to provide during regular school hours. ( )

**b.** For participants of mandatory school attendance age, seven (7) through sixteen (16), who are not enrolled in school, *the* DDA must *document that it has referred* the child to the local school district for enrollment in educational and related services under the provisions of the Individuals with Disabilities Education Act (IDEA). ( )

**02. Requirements for Participants Birth to Three Years of Age**. For participants birth to age three (3), under IDEA, Part C, DDAs must: ( )

**a.** Submit enrollment tracking forms to the Department for any additions, changes, or exiting program; ( )

**b.** Cooperate with the Department's regional Infant Toddler Program; ( )

**c.** Communicate regularly with the child's service coordinator regarding the status of services and any need for change in services. The DDA must alert the child's service coordinator of any identified developmental or health concern or potential developmental delay that is currently not addressed on the child's IFSP. ( )

**707. ACCESSIBILITY OF AGENCY RECORDS.**
Records must be accessible to the Department during normal operation of the agency for inspection and copying, with or without prior notification, under Section 39-108, Idaho Code. ( )

***708. REQUIREMENTS FOR DELIVERY OF DDA SERVICES.***

***01. Comprehensive Assessment and Plan Requirements****. Prior to the delivery of a service, a comprehensive assessment must be completed by a professional qualified to deliver the service and it must document the participant's need for the service. All services must be included on the participant's plan of service. Program Implementation Plans must be developed for each objective listed on the plan of service.* *( )*

***02. Service Requirements****. All services must be:* *( )*

***a.*** *Recommended by a physician or other practitioner of the healing arts;* *( )*

***b.*** *Based on participant needs, interests, or choices; and* *( )*

***c.*** *In compliance with all applicable rules of this chapter.* *( )*

**709. (RESERVED).**

**REQUIRED SERVICES EACH AGENCY MUST PROVIDE**
**(Sections 710 through 716)**

**710. REQUIRED SERVICES.**
Each DDA is required to provide developmental therapy, and, in addition, also must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. *Developmental therapy must be provided by qualified employees of the agency. Psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy must either be provided by qualified employees of the agency or through a formal written agreement.* ( )

**01. Sufficient Quantity and Quality**. All required services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified individuals in accordance with the requirements in Section 420 of these rules. ( )

**02. When a Required Service Is Not Available**. When a required service, *other than developmental therapy*, is not provided by the agency due to a documented shortage of available providers in a specific geographic area, the DDA must document its effort to secure the service or facilitate the referral for the needed service, including notifying the service coordinator, when the participant has one. ( )

**711. DEVELOPMENTAL THERAPY.**
Developmental therapy services must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on a comprehensive developmental assessment completed prior to the delivery of developmental therapy. *( )*

***01. Areas of Service***. These services must be directed toward the rehabilitation or habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. *( )*

***02. Age-Appropriate***. *Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate.* *( )*

***03. Tutorial Activities and Educational Tasks are Excluded***. *Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability.* *( )*

***04. Settings for Developmental Therapy***. Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices. *( )*

***05. Staff-to-Participant Ratio***. When *group* developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. Additional staff must be added, as necessary, to meet the needs of each individual served. ( )

**712. PSYCHOTHERAPY.**

**01. Required Psychotherapy Services**. The following psychotherapy services must be available through each agency and based on assessment(s) conducted by the professional qualified to deliver the service: ( )

**a.** Individual psychotherapy; ( )

**b.** Group psychotherapy in which there is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and ( )

**c.** Family-centered psychotherapy that includes the participant and at least one (1) other family member at any given time. ( )

**02. Staff Qualifications for Psychotherapy Services**. Psychotherapy services must be provided by one (1) of the following qualified professionals: ( )

**a.** Licensed Psychiatrist; ( )

**b.** Licensed Physician; ( )

**c.** Licensed Psychologist; ( )

**d.** Licensed Clinical Social Worker; ( )

**e.** Licensed Clinical Professional Counselor; ( )

**f.** Licensed Marriage and Family Therapist; ( )

**g.** Certified Psychiatric Nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree; ( )

**h.** Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified above under Subsections 712.02.a. through 712.02.g. of this rule; ( )

***i.*** *Registered Marriage and Family Therapist Intern whose provision of psychotherapy is supervised as described in Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists".* *( )*

***j.*** Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or ( )

***k.*** A Psychologist Extender, registered with the Bureau of Occupational Licenses, whose provision of psychotherapy is supervised as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". ( )

**713. OCCUPATIONAL THERAPY.**

Occupational therapy services must be available and provided by a licensed occupational therapist and be based on the results of an occupational therapy assessment completed in accordance with Section 604 of these rules. ( )

**714. PHYSICAL THERAPY.**
Physical therapy services must be available and provided by a licensed physical therapist and be based on the results of a physical therapy assessment completed in accordance with Section 604 of these rules. ( )

**715. SPEECH AND HEARING THERAPY.**
Speech and hearing therapy services must be available and provided by a qualified speech-language pathologist, as defined in these rules, and be based on the results of a speech and language assessment completed in accordance with Section 604 of these rules. ( )

**716. -- 719. (RESERVED).**

**OPTIONAL SERVICES AGENCIES MAY PROVIDE**
**(Sections 720 through 726)**

**720. OPTIONAL SERVICES.**
DDAs may opt to provide any of the following services: pharmacological management, psychiatric diagnostic interviews, community crisis supports, collateral contact, and Intensive Behavioral Intervention (IBI). All services must be provided by qualified individuals in accordance with the requirements in Section 420 of these rules. ( )

**721. PHARMACOLOGICAL MANAGEMENT.**
Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency and duration of the service specified. ( )

**722. PSYCHIATRIC DIAGNOSTIC INTERVIEW.**
A psychiatric diagnostic interview must include a history, a current mental status examination, and offer recommendations for treatment interventions needed, if any. If the interview exam results in a recommendation for additional intervention and the recommendation is accepted by the participant and his parent or legal guardian, if applicable, the recommendation must be incorporated into the participant's plan of service with the type, amount, frequency, and duration of service specified. ( )

**01. Physician Requirement**. In order for a DDA to conduct a psychiatric diagnostic interview, the agency must have a physician on contract for the purpose of overseeing the services on the plan. ( )

**02. On Plan of Service**. A psychiatric diagnostic interview must be incorporated into the participant's plan of service. ( )

**03. Staff Qualifications**. A psychiatric diagnostic interview must be conducted by one (1) of the following professionals, in direct face-to-face contact with the participant: ( )

**a.** Psychiatrist; ( )

**b.** Physician or other practitioner of the healing arts; ( )

**c.** Psychologist; ( )

**d.** Clinical social worker; or ( )

**e.** Clinical professional counselor. ( )

**723. COMMUNITY CRISIS SUPPORTS.**
Community crisis supports are interventions for participants who are adults or who are on the ISSH Waiver, who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. DDAs that choose to provide these services must do so in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services", Section 400. ( )

**724. COLLATERAL CONTACT.**
Collateral contact is consultation with or treatment direction given to a person with a primary relationship to a participant for the purpose of assisting the participant to live in the community. Collateral contact must: ( )

**01. Conducted by Agency Professionals**. Be conducted by agency professionals qualified to deliver services and be necessary to gather and exchange information with individuals having a primary relationship to the participant. ( )

**02. Face to Face or by Telephone**. Be conducted either face-to-face or by telephone when telephone contact is the most expeditious and effective way to exchange information. Collateral contact does not include general staff training, general staffings, regularly scheduled parent-teacher conferences, general parent education, or treatment team meetings, even when the parent is present. ( )

**03. On the Plan of Service**. Have a goal and objective stated on the plan of service that identifies the purpose and outcome of the service and is conducted only with individuals specifically identified on the plan of service. *Program Implementation Plans are not required for collateral contact objectives.* ( )

**725. INTENSIVE BEHAVIORAL INTERVENTION (IBI).**

***01. Compliance with Sections 800 through 899***. DDAs that choose to offer *I*ntensive *B*ehavioral *I*ntervention (IBI) must provide *IBI* services in accordance with Sections 800 through 899 of these rules. ( )

***02. Established Developmental Therapy Program****. After July 1, 2006, agencies must have provided developmental therapy for at least one (1) year, and not be operating under a provisional certification, prior to providing IBI services.* ( )

***03. Exception****. Agencies that were providing IBI services prior to July 1, 2006, are exempt from the requirement under Subsection 725.02 of these rules.* ( )

**726. -- 799. (RESERVED).**

**REQUIREMENTS FOR THE DELIVERY OF INTENSIVE BEHAVIORAL INTERVENTION (IBI)**
**(Sections 800 through 899)**

**800. INTENSIVE BEHAVIORAL INTERVENTION (IBI) *SERVICE DESCRIPTION AND ELIGIBILITY.***

**01. Individualized and Comprehensive Interventions**. IBI consists of individualized, comprehensive interventions *that have been shown to be effective and are* used on a short term, one-to-one basis. These interventions: ( )

**a.** Produce measurable outcomes that diminish behaviors that interfere with the development and use of language and appropriate social interaction skills; or ( )

**b.** Broaden an otherwise severely restricted range of interest; and ( )

**c.** Increase the child's ability to participate in other therapies and environments. ( )

**02. IBI Service Eligibility**. IBI is available to children with developmental disabilities through the month of their twenty-first birthday, who have the following characteristics: ( )

**a.** Self-injurious, aggressive or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department; and ( )

**b.** A severe deficit, defined as equivalent to fifty percent (50%) or less of chronological age, in at least one (1) of the following areas: ( )

i. Verbal and nonverbal communication as evidenced by the SIB-R Social Interaction & Communication Skills cluster score; ( )

ii. Social interaction as evidenced by the SIB-R Social Interaction subscale score; or ( )

iii. Leisure and play skills as evidenced by the SIB-R Home/Community Orientation

subscale score. ( )

**801. IBI AUTHORIZATION AND REVIEW.**
*IBI services must be reviewed and prior authorized for each service year as follows:* *( )*

**01. Initial *IBI Authorization***. *The Department determines IBI eligibility based on information submitted by the DDA and other information gathered by the Department as deemed necessary.* At least twenty (20) working days prior to the intended start date of IBI services, the DDA must use Department-approved forms to submit*;* *( )*

***a.*** *E*vidence of *the* child's eligibility for Intensive Behavioral Intervention*;* *( )*

***b.*** *The comprehensive IBI assessments;* *( )*

***c.*** *T*he Program Implementation Plans*;* *( )*

***d.*** *T*he number of hours of service requested*;* and *( )*

***e.*** *M*easurable *objectives*. *( )*

**02. *Three-Month* Review**. The agency *must* conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )

**03. *Sixth-Month* Review and Authorization**. *At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit:* ( )

***a.*** *The three (3) month review;* *( )*

***b.*** *Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for those six (6) months; and* *( )*

***c.*** *When continuing IBI services are requested, the Program Implementation Plans, the number of hours of service requested, and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services.* *( )*

**04. *Nine-Month* Review**. The agency *must* conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )

**05. Annual Review and Authorization**. *At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit:* ( )

***a.*** *The nine (9) month review;* *( )*

***b.*** *Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for that year; and* *( )*

***c.*** *When continuing IBI services are requested:* *( )*

*i. A new SIB-R that reflects the child's current status and any additional information required to establish continuing eligibility; ( )*

*ii. The Program Implementation Plans; and ( )*

*iii. The number of hours of service requested and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. ( )*

**802. COMPREHENSIVE IBI ASSESSMENT.**
A comprehensive IBI assessment must be completed by a certified IBI professional prior to the initial provision of IBI or IBI Consultation. The results of the assessment must form the basis for planning interventions. The assessment must include the following: ( )

**01. Review of Assessments and Relevant Histories**. ( )

**a.** Medical history, medications, and current medical status; ( )

**b.** Medical/social history that includes a developmental history and onset of developmental disability; ( )

***c.*** Comprehensive developmental assessment reflecting the child's current status; ( )

***d.*** Specific skill assessment, when such an assessment is completed; ( )

***e.*** SIB-R Maladaptive Index and a list of the child's maladaptive behaviors; ( )

***f.*** Baseline of the child's maladaptive behavior(s), if available; ( )

***g.*** Psychological assessments and results of psychometric testing, or for very young children, a developmental assessment with equivalent age-appropriate social-emotional status, *if available*; ( )

***h.*** A mental health or social and emotional assessment, such as the Child and Adolescent Functional Assessment Scale (CAFAS), when one has been completed; ( )

***i.*** Public school or Infant Toddler Program records including relevant birth records, multidisciplinary team assessments, recommendations, and Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs); and ( )

***j.*** Other relevant assessments that may be available, including those for speech and hearing and physical and occupational therapy. ( )

**02. Interviews**. Interviews must be conducted with the child, if possible, and to the extent of the child's abilities; the child's parent or legal guardian, or the primary care provider; and

any other individuals who spend significant amounts of time with the child. These interviews must result in a written summary of the findings of each interview and include the following: ( )

**a.** Description of the child's desired and problem behaviors; ( )

**b.** Opinion about environmental stimuli that appear to precede problem behaviors; ( )

**c.** Opinion about the internal states or setting events that precede desired and problem behaviors; ( )

**d.** Opinion about identification of stimuli that maintain the desired or problem behaviors; and ( )

**e.** Opinion about factors that alleviate problem behaviors and increase desired behaviors. ( )

**03. Observation of the Child**. Observations of the child must occur in environments in which the child spends significant amounts of time and where problem behaviors have been reported. Results of the observations must include the following: ( )

**a.** Specific descriptions *and frequencies* of problem behaviors; ( )

**b.** Identification of environmental stimuli that appear to precede problem behaviors; ( )

**c.** Identification of internal states or setting events that appear to precede problem behaviors; ( )

**d.** Identification of stimuli that maintain the desired or problem behaviors; and( )

**e.** Identification of factors that alleviate problem behaviors and increase desired behaviors. ( )

**04. Clinical Opinion**. Clinical opinion about the underlying causes, antecedents, motivations, and communicative intent of desired and problem behaviors. ( )

**803. IBI TRANSITION PLAN.**
An IBI transition plan must be developed when it is anticipated that IBI services will be terminated within the next Department or agency review period and the child will be moving into natural learning environments or less intensive therapy settings. *The IBI transition plan may not be used as a substitute for, nor does it replace the transition plans required under Sections 701 and 702 of these rules. IBI t*ransition *p*lans must include the following steps to support the transition and the timelines for those steps: ( )

**01. Setting**. The setting to which the child will be moving and the therapists or persons who will be interacting with the child ( )

**02. Training of New Therapists or Other Persons**. How behavioral intervention techniques will be shared with new therapists or other persons in the new environments to encourage generalization and maintenance of appropriate behavior and action to be taken if the child demonstrates regression in the new setting in skills learned through IBI. ( )

**804. IBI CONSULTATION.**
Professionals may provide IBI consultation to parents and other family members, professionals, paraprofessionals, school personnel, child care providers, or other caregivers who provide therapy or care for *an IBI eligible* child in other disciplines to assure successful integration and transition from IBI to other therapies, services, or types of care. IBI consultation objectives and methods of measurement must be developed in collaboration with the person receiving IBI consultation. ( )

**01. Service Delivery Qualification**. IBI consultation must be delivered by an IBI professional who meets the requirements in Section 420 of these rules. ( )

**02. Measurable Progress**. IBI consultation must result in measurable improvement in the child's behavior. It is not intended to be used for educational purposes only. ( )

**03. Evidence of Progress**. Persons who receive IBI consultation must meet with the IBI professional, agree to follow an IBI Implementation Plan, and provide evidence of progress. ( )

**04. Individualized**. IBI consultation may not be reimbursed when it is delivered to a group of parents. IBI consultation is specific to the unique circumstances of each child. ( )

**805. -- 899. (RESERVED).**

## QUALITY ASSURANCE, PARTICIPANT RIGHTS, REQUIRED POLICIES, ETC. (Sections 900 through 999)

**900. REQUIREMENTS FOR AN AGENCY'S QUALITY ASSURANCE PROGRAM.**
Each DDA defined under these rules must develop and implement a quality assurance program. ( )

**01. Purpose of the Quality Assurance Program**. The quality assurance program is an ongoing, proactive, internal review of the DDA designed to ensure: ( )

**a.** Services provided to participants produce measurable outcomes, are high quality, and are consistent with individual choices, interests, needs, and current standards of practice; ( )

**b.** Sufficient staff and material resources are available to meet the needs of each person served; ( )

**c.** The environment in which services are delivered is safe and conducive to learning; ( )

**d.** Skill training activities are conducted in the natural setting where a person would commonly learn and utilize the skill, whenever appropriate; and ( )

**e.** The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. ( )

**02. Quality Assurance Program Components**. Each DDA's written quality assurance program must include: ( )

**a.** Goals and procedures to be implemented to achieve the purpose of the quality assurance program as described in Subsection 900.01 of these rules; ( )

**b.** Person, discipline or department responsible for each goal; ( )

**c.** A system to ensure the correction of problems identified within a specified period of time; ( )

**d.** A method for assessing participant satisfaction; and ( )

**e.** A regular review of the agency's code of ethics, identification of violations, and implementation of an internal plan of correction. ( )

**03. Additional Requirements**. The quality assurance program must ensure that DDA services provided to participants: ( )

**a.** Are developed with each participant and guardian where applicable, and actively promote the participation, personal choice and preference of the participant; ( )

**b.** Are age appropriate; ( )

**c.** Promote integration; ( )

**d.** Provide opportunities for community participation and inclusion; ( )

**e.** Offer opportunities for participants to exercise their rights; and ( )

**f.** Are observable in practice. ( )

**901. -- 904. (RESERVED).**

**905. PARTICIPANT RIGHTS.**
Each DDA must ensure the rights provided under Sections 66-412 and 66-413, Idaho Code, as well as the additional rights listed in Subsection 905.02 of this rule, for each participant receiving DDA services. ( )

**01. Participant Rights Provided Under Idaho Code**. Sections 66-412 and 66-413, Idaho Code, provide the following rights for participants: ( )

**a.** Humane care and treatment; ( )

**b.** Not be put in isolation; ( )

**c.** Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; ( )

**d.** Be free of mental and physical abuse; ( )

**e.** Voice grievances and recommend changes in policies or services being offered; ( )

**f.** Practice his own religion; ( )

**g.** Wear his own clothing and to retain and use personal possessions; ( )

**h.** Be informed of his medical and habilitative condition, of services available at the agency and the charges for the services; ( )

**i.** Reasonable access to all records concerning himself; ( )

**j.** Refuse services; and ( )

**k.** Exercise all civil rights, unless limited by prior court order. ( )

**02. Additional Participant Rights**. The agency must also ensure the following rights for each participant: ( )

**a.** Privacy and confidentiality; ( )

**b.** Be treated in a courteous manner; ( )

**c.** Receive a response from the agency to any request made within a reasonable time frame; ( )

**d.** Receive services that enhance the participant's social image and personal competencies and, whenever possible, promote inclusion in the community; ( )

**e.** Refuse to perform services for the agency. If the participant is hired to perform services for the agency the wage paid must be consistent with state and federal law; ( )

**f.** Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; ( )

**g.** All other rights established by law; and ( )

**h.** Be protected from harm. ( )

**03. Method of Informing Participants of Their Rights**. Each DDA must ensure and document that each person receiving services is informed of his rights in the following manner: ( )

**a.** Upon initiation of services, the DDA must provide each participant and his parent or guardian, where applicable, with a packet of information which outlines rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This packet must be written in easily understood terms. ( )

**b.** When providing center-based services, a DDA must prominently post a list of the rights contained in this chapter. ( )

**c.** The DDA must provide each participant and his parent or guardian, where applicable, with a verbal explanation of their rights in a manner that will best promote individual understanding of these rights. ( )

**d.** Parents of infants and toddlers under three (3) years of age must be provided with a copy of their parental rights consistent with the requirements of 34 CFR 303.400 through 303.460 and 303.510 through 303.512. ( )

**906. -- 909. (RESERVED).**

**910. OBLIGATION TO REPORT ABUSE, NEGLECT, EXPLOITATION, AND INJURIES.**
Each agency must report all confirmed or suspected incidents of mistreatment, neglect, exploitation, or abuse of participants to the adult or child protection authority, in accordance with the "Child Protective Act," Section 16-1619, Idaho Code, and the "Adult Abuse, Neglect and Exploitation Act," Section 39-5303, Idaho Code. ( )

**911. -- 914. (RESERVED).**

**915. POLICIES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND APPROPRIATE BEHAVIORS.**
Each DDA must develop and implement written policies and procedures that address the development of participants' social skills and management of inappropriate behavior. These policies and procedures must include statements that: ( )

**01. Positive Social Skills**. Focus on developing or increasing positive social skills. ( )

**02. Prevention Strategies**. Ensure and document the use of positive approaches to increase social skills and decrease inappropriate behavior while using least restrictive alternatives and consistent, proactive responses to behaviors. ( )

**03.** ***Function of Behavior***. Address the possible underlying causes or function of the

behavior and identifying what *a* participant may be attempting to communicate by the behavior. ( )

**04. Behavior Replacement**. Ensure that programs to assist participants with managing inappropriate behavior include teaching of alternative adaptive skills to replace the inappropriate behavior. ( )

**05. Protected Rights**. Ensure that the safety, welfare and human and civil rights of participants are adequately protected. ( )

**06. Objectives and Plans**. Ensure that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior and any other behaviors which significantly interfere with the participant's independence or ability to participate in the community. Ensure that reinforcement selection is individualized and appropriate to the task and not contraindicated for medical reasons. ( )

**07. Participant Involvement**. Ensure that plans developed by the DDA involve the participant, whenever possible, in developing the plan to increase social skills and to manage inappropriate behavior. ( )

**08. Written Informed Consent**. Ensure that programs developed by an agency to assist participants with managing inappropriate behavior are conducted only with the written informed consent of the participant and guardian where applicable. When programs used by the agency are developed by another service provider the agency must obtain a copy of the informed consent. ( )

**09. Review and Approval**. Ensure that programs developed by an agency to manage inappropriate behavior are only implemented after the review and written approval of the qualified professional. If the program contains restrictive or aversive components, the agency psychologist must also review and approve, in writing, the plan prior to implementation. When programs implemented by the agency are developed by another service provider the agency must obtain a copy of these reviews and approvals. ( )

**10. Appropriate Use of Interventions**. Ensure that interventions used to manage a participant’s inappropriate behavior are never used: ( )

**a.** For disciplinary purposes; ( )

**b.** For the convenience of staff; ( )

**c.** As a substitute for a needed training program; or ( )

**d.** By untrained or unqualified staff. ( )

**916. -- 919. (RESERVED).**

**920. ANNUAL PLAN.**

Each agency is required, as needed, to participate in the development of the state developmental disabilities plan by completing an annual needs assessment survey regarding services for Idahoans with developmental disabilities. ( )

**921. -- 999. (RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS AND DECLARATORY RULINGS

### DOCKET NO. 16-0503-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code.

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

**This rule change is needed in order to clarify the following issues: when an appeal is to be filed; the hearing officer must dismiss an untimely appeal; and a proposed order of default must be issued if someone fails to appear for a hearing allowing fourteen (14) days to show just cause to the hearing officer as to why the hearing was missed. There are two changes to the proposed rule based on comments received. The first change will protect the integrity of both this rule and IDAPA 16.02.19 "Food Safety and Sanitation Standards for Food Establishments," by deleting the current information regarding appeals for food establishments in these rules and replacing that with a cross reference to the "Appeal Process" in the "Food Safety and Sanitation Standards for Food Establishments" rules. The second change will add consistency to the rule by changing the term "the appellant" to "that party" in the "Default" section**.

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 356 through 364**.

**Pursuant to Section 67-5228, Idaho Code, a correction has been made in Section 16.05.03.005. The Fax number for submitting electronic filings relating to administrative procedures to the Department has been changed. The Section and corrected Fax number are being reprinted with the pending rule to show the correction**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no fiscal impact to the State General Fund due to this rule making.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeanne T. Goodenough, Division Chief, Department of Health and Welfare, Office of Attorney General at (208) 334-6558.

DATED this 26th day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
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## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, 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 October 19, 2005.

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:

**After several years of use, the Department's contested case rules can benefit from minor changes. Implementing the rule changes described below will reduce the number of appeals that are unnecessarily reviewed, saving both time and money. Pertinent sections of this chapter are being published in order to conform the text with the Department's policy of using "must" instead of "shall".**

**Three sections of this rule will be revised to clarify the following issues: when an appeal is to be filed; the hearing officer must dismiss an untimely appeal; and that a proposed order of default must be issued if someone fails to appear for a hearing. Currently the hearing officer has discretion in issuing a proposed order of default**.

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

increased: N/A

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

**This rulemaking has no negative fiscal impact to the general fund; however, it should provide a positive fiscal impact in two ways: (1) if the hearing officer issues proposed orders of default, this will avoid Director, delegees, and staff time to review unnecessary appeals, and (2) individuals who continue their benefits during the hearing process and who ultimately do not prevail will have smaller overpayments if the hearing is held expeditiously. Currently if an appeal is remanded back to the Hearing Officer he charges the Department for setting up a new file and another hearing for the same individual. This rule change will save the Department money by reducing the number of remanded appeals. Currently the cost of an individual hearing is $278**.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of limited time to promulgate rule and this rule benefits participants.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeanne T. Goodenough, Division Chief, Department of Health and Welfare, Office of Attorney General at (208) 334-6558.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

**FOLLOWING IS THE TEXT OF THE PENDING RULE**

**000. LEGAL AUTHORITY.**
The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings ~~*pursuant to*~~ under Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code. ~~*(3-30-01)*~~(  )

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

**003. ADMINISTRATIVE APPEALS.**
All contested cases ~~*shall be*~~ are governed by the provisions of this chapter. The Board of Health and Welfare and the Director of the Department of Health and Welfare find that the provisions of

IDAPA 04.11.01.000, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable for contested cases involving the programs administered by the Department, because of the specific requirements of federal and state law regarding hearing processes, and the complexity of the rules at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". ~~*(3-30-01)*~~(  )

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

**005. ADMINISTRATIVE PROCEDURES SECTION.**
Petitions for adoption of rules, petitions for declaratory rulings, and appeals ~~*shall*~~ *must* be filed with: Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036. Phone: (208) 334-5564. FAX: ~~*332-7347*~~ *334-6558*. ~~*(3-30-01)*~~(  )

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

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

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

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

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

**05. Internet Website**. The Department's internet website is found at http://www.healthandwelfare.idaho.gov. (  )

**007. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**
Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". (  )

***00~~6~~8*. -- 009. (RESERVED).**

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

**040. PETITION FOR ADOPTION OF RULES.**
~~*Pursuant to*~~ Under Section 67-5230, Idaho Code, any person may file a written petition with the Administrative Procedures Section requesting the promulgation, amendment, or repeal of a rule.

The petition ~~*shall*~~ must include a name, address and phone number to which the Department may respond; list the rule in question and explain the reasons for the petition; and include the suggested language of the rule. The Director ~~*shall*~~ will initiate rulemaking proceedings or deny the petition in writing within twenty-eight (28) days. ~~*(3-30-01)*~~(____)

**041. -- 049. (RESERVED).**

**050. PETITION FOR DECLARATORY RULING.**
~~*Pursuant to*~~ Under Section 67-5232, Idaho Code, any person may file a written petition to the Director through the Administrative Procedures Section for a declaratory ruling as to the applicability of any statute or rule of the Department to an actual set of facts involving that person. ~~*(3-30-01)*~~(____)

**051. CONTENTS OF PETITION FOR DECLARATORY RULING.**
A petition for a declaratory ruling ~~*shall*~~ must identify that it is a request for a declaratory ruling ~~*pursuant to*~~ under this section; the specific statute**,** or rule with respect to which the declaratory ruling is requested; a complete description of the situation for which the declaratory ruling is requested; and the specific ruling requested. The petition ~~*shall*~~ must include the date of the petition, the name, address and phone number of the petitioner and whether the petition is made on behalf of a corporation or organization. The petition ~~*shall*~~ must identify the manner by which the statute or rule interferes with, impairs, or threatens to interfere with or impair the legal rights, duties, licenses, immunities, interests or privileges of the petitioner. ~~*(3-30-01)*~~(____)

**052. DISPOSITION OF PETITION FOR DECLARATORY RULING.**
The Director ~~*shall*~~ will issue a final declaratory ruling in writing within seventy (70) days after receipt of the petition or within such additional time as may be required. The Director may decline to issue a declaratory ruling in the following circumstances: ~~*(3-30-01)*~~(____)

**01. Incomplete**. When a petition fails to meet the requirements set forth in Section 051 of these rules; (3-30-01)

**02. Contested Case**. When the issue set forth in the petition would be more properly addressed as a contested case, such as where there is a reasonable dispute as to the relevant facts, or where witness credibility is an issue; (3-30-01)

**03. No Legal Interest**. When the petition fails to state a sufficient or cognizable legal interest to confer standing; (3-30-01)

**04. Others Affected**. When the issue presented would substantially affect the legal rights, license, privileges, immunities, or interests of parties other than petitioners; or (3-30-01)

**05. Beyond Authority**. When the ruling requested is beyond the authority of the Department. (3-30-01)

**053. -- 099. (RESERVED).**

**100. DEPARTMENT RESPONSIBILITY.**

When a decision is appealable, the Department ~~*shall*~~ will advise the individual or provider in writing of the right and method to appeal and the right to be represented. ~~*(3-30-01)*~~(____)

**101. FILING OF APPEALS.**
Appeals ~~*shall*~~ must be filed in writing and ~~*shall*~~ state the appellant's name, address and phone number, and the remedy requested, except that appeals of action relating to Division of Welfare programs listed in Section 200 of these rules may be made verbally to Department Staff by an individual or representative. Appeals should be accompanied by a copy of the decision that is the subject of the appeal. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision ~~*shall*~~ have twenty-eight (28) days from the date ~~*of*~~ the decision is mailed to file an appeal. An appeal is filed when it is received by the Department or postmarked within the time limits set forth in these rules. ~~*(3-30-01)*~~(____)

**102. NOTICE OF HEARING.**
All parties in an appeal ~~*shall*~~ will be notified of a hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The hearing officer may provide a shorter advance notice upon request of a party or for good cause. The notice ~~*shall*~~ will identify the time, place and nature of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of any statutes and rules involved; the issues involved; and the right to be represented. The notice ~~*shall*~~ must identify how and when documents for the hearing will be provided to all parties. ~~*(3-30-01)*~~(____)

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

**105. DISPOSITION OF CASE WITHOUT A HEARING.**
Any contested case may be resolved without a hearing on the merits of the appeal by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction~~,~~. ~~*or if*~~ The hearing officer must dismiss an appeal that is not filed within the time limits set forth in these rules. ~~*(3-30-01)*~~(____)

**106. DEFAULT.**
If a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer ~~*may*~~ must enter a proposed default order against that party. The default order ~~*shall*~~ must be set aside if, within fourteen (14) days of the date of mailing, ~~*the appellant*~~ *that party* submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. ~~*(3-30-01)*~~(____)

**107. INTERVENTION.**
Persons other than the original parties to an appeal who are directly and substantially affected by the proceeding may participate if they first secure an order from the hearing officer granting leave to intervene. The granting of leave to intervene ~~*shall*~~ is not to be construed ~~*to be*~~ as a finding or determination that the intervenor is or may be a party aggrieved by any ruling, order or decision of the Department for purposes of judicial review. ~~*(3-30-01)*~~(____)

**108. -- 119. (RESERVED).**

**120. DISCOVERY.**
Except for hearings involving Section 56-1005(5), Idaho Code, prehearing discovery ~~*shall be*~~ is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The hearing officer may order production of this information if a party refuses to comply after receiving a written request. The hearing officer ~~*shall*~~ will issue such other orders as are needed for the orderly conduct of the proceeding. Nothing in Section 120 ~~*shall*~~ limits the authority of the Director provided in Section 56-227C, Idaho Code. ~~*(3-30-01)*~~(____)

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

**122. FILING OF DOCUMENTS IN AN APPEAL.**
All documents intended to be used as exhibits ~~*shall*~~ must be filed with the hearing officer. Such documents ~~*shall*~~ will be provided to every party at the time they are filed with the hearing officer, in person or by first class mail. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties ~~*shall*~~ will accompany all documents when they are filed with the hearing officer. ~~*(3-30-01)*~~(____)

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

**124. REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.**
Unless an individual, authorized representative or attorney provides a written declaration to the contrary, eligible individuals with developmental disabilities or mental illness ~~*shall be*~~ are deemed to be represented by the state Protection and Advocacy System established ~~*pursuant to*~~ under 42 USC 6041, et seq., and 42 USC 10801 et seq., and designated by the Governor. The protection and advocacy system ~~*shall have*~~ has access to records of such individuals maintained by any program or institution of the Department if the individual is unable to authorize the system to have such access, or does not have a legal guardian, conservator or other legal representative. Service of documents ~~*shall*~~ will be made on the protection and advocacy system and the individual. Unless the protection and advocacy system provides written notification to the Department that it will not be representing the individual, the system ~~*shall be*~~ is an authorized representative. ~~*(3-30-01)*~~(____)

**125. INTERPRETERS.**
If necessary, an interpreter ~~*shall*~~ will be provided by the Department. ~~*(3-30-01)*~~(____)

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

**131. AUTHORITY OF HEARING OFFICER.**
The hearing officer ~~*shall*~~ will consider only information that was available to the Department at the time the decision was made. If appellant shows that there is additional relevant information that was not presented to the Department with good cause, the hearing officer ~~*shall*~~ will remand the case to the Department for consideration. No hearing officer ~~*shall have*~~ has the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. The hearing officer ~~*shall*~~ must defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer ~~*shall*~~ will not retain jurisdiction on any matter after it has been remanded to the Department. ~~*(3-30-01)*~~(____)

**132. BURDEN OF PROOF - INDIVIDUAL BENEFIT CASES.**
The Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification; revoke or limit a license; or to contest a tobacco violation ~~*pursuant to*~~ under Sections 39-5705 and 39-5708, Idaho Code. The appellant has the burden of proof on all other issues, including establishing eligibility for a program, service or license; seeking an exemption required due to criminal history or abuse registry information; or seeking to avoid license suspension for failure to pay child support.
~~*(3-30-01)*~~(____)

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

**134. EVIDENCE.**
~~*Pursuant to*~~ Under Section 67-5251, Idaho Code, the hearing ~~*shall be*~~ is informal and technical rules of evidence ~~*shall*~~ do not apply, except that irrelevant, immaterial, incompetent, unduly repetitious evidence, evidence excludable on constitutional or statutory grounds, or evidence protected by legal privilege ~~*shall be*~~ is excluded. Hearsay evidence ~~*shall*~~ will be received if it is relevant to a matter in dispute and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs, or corroborates competent evidence. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Unless otherwise stated in statute, rule, or regulation, the evidentiary standard ~~*shall be*~~ is proof by a preponderance of the evidence. ~~*(3-30-01)*~~(____)

**135. DISCRETIONARY JUDICIAL NOTICE.**
Notice may be taken of judicially cognizable facts by the hearing officer or authority on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties ~~*shall*~~ will be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the parties ~~*shall*~~ will be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.
~~*(3-30-01)*~~(____)

**136. MANDATORY JUDICIAL NOTICE.**

~~***01. Judicial Notice***~~. The hearing officer ~~*shall*~~ will take judicial notice, on its own motion or on the motion of any party, of the following admissible, valid and enforceable materials: ~~*(3-30-01)*~~

~~***02. Admissible, Valid, and Enforceable Materials***. *The following are admissible, valid and enforceable:* *(3-30-01)*~~

~~***a.***~~ Rules of the Department and other state agencies; ~~*(3-30-01)*~~

~~***b.***~~ Federal regulations; ~~*(3-30-01)*~~

~~***c.***~~ State plans of the Department; ~~*(3-30-01)*~~

~~***d.***~~ The Constitutions and statutes of the United States and Idaho; ~~*(3-30-01)*~~

~~***e.***~~ Public records; and ~~*(3-30-01)*~~

~~***f.***~~ Such other materials that a court of law must judicially notice. ~~*(3-30-01)*~~(____)

**137. HEARING RECORD.**
The hearing officer ~~*shall*~~ must arrange for a record to be made of a hearing. The hearing ~~*shall*~~ must be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record ~~*shall*~~ must be transcribed at the expense of the party requesting a transcript and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. The Department ~~*shall*~~ must maintain the complete record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. ~~*(3-30-01)*~~(____)

**138. DECISION AND ORDER.**
A preliminary order ~~*shall*~~ must be issued by the hearing officer not later than thirty (30) days after the case is submitted for decision. The order ~~*shall*~~ must include specific findings on all major facts at issue; a reasoned statement in support of the decision; all other findings and recommendations of the hearing officer; a preliminary decision affirming, reversing or modifying the action or decision of the Department, or remanding the case for further proceedings; and the procedures and time limits for filing requests for review of the order. Unless otherwise provided by a statute governing a particular program, motions for reconsideration of a preliminary order ~~*shall*~~ will not be accepted. ~~*(3-30-01)*~~(____)

**139. -- 149. (RESERVED).**

**150. REVIEW OF PRELIMINARY ORDERS BY DEPARTMENT.**
In cases under the jurisdiction of the Department, either party may file a request for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request ~~*shall*~~ must identify all legal and factual bases of

disagreement with the preliminary order. The Director or designee ~~*shall*~~ must allow for briefing by the parties and ~~*shall*~~ determines whether oral argument will be allowed. The Director or designee ~~*shall*~~ determines whether a transcript of the hearing is needed and if so, one ~~*shall*~~ will be provided by the party who requests review of the preliminary order. The Director or designee ~~*shall*~~ must exercise all of the decision-making power he would have had if he had presided over the hearing. ~~*(3-30-01)*~~(____)

**151. PETITION FOR REVIEW BY BOARD OF HEALTH AND WELFARE.**
In cases under the jurisdiction of the Board, either party may file a petition for review with the Administrative Procedures Section not later than twenty-eight (28) days from the date the preliminary order was mailed. The Administrative Procedures Section ~~*shall*~~ will establish a schedule for the submission of briefs and if allowed, oral argument. Appellant ~~*shall*~~ must provide a transcript of the hearing before the hearing officer unless the appeal involves only questions of law. The Board ~~*shall*~~ will exercise all of the decision-making power they would have had if they had presided over the hearing. ~~*(3-30-01)*~~(____)

**152. FINAL ORDER.**
The Board, Director or designee may affirm, modify, or reverse the order, or remand the matter to the hearing officer for further proceedings. The decision ~~*shall*~~ informs the parties of the procedure and time limits for filing appeals with the district court. Motions for reconsideration of a final order ~~*shall*~~ will not be accepted. ~~*(3-30-01)*~~(____)

**153. SERVICE OF PRELIMINARY AND FINAL ORDERS.**
Orders ~~*shall*~~ will be deemed to have been served when copies ~~*thereof*~~ are mailed to all parties of record or their attorneys. ~~*(3-30-01)*~~(____)

**154. MAINTENANCE OF ORDERS.**
All final orders of the Board or the Director ~~*shall*~~ will be maintained by the Administrative Procedures Section and made available for public inspection for at least six (6) months, or until all appeals are concluded, whichever is later. ~~*(3-30-01)*~~(____)

**155. EFFECT OF PETITION FOR JUDICIAL REVIEW.**
The filing of a petition for judicial review ~~*shall*~~ will not stay compliance with a final order or suspend the effectiveness of the order, unless otherwise ordered or mandated by law.
~~*(3-30-01)*~~(____)

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

**201. TIME FOR FILING APPEAL.**
A decision issued by the Department in a Division of Welfare program ~~*shall*~~ will be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps ~~*shall have*~~ has ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified in the particular program within thirty (30) days after the action would have been taken if the Department had

acted in a timely manner. ~~*(3-30-01)*~~(____)

**202. INFORMAL CONFERENCE.**
An appellant or representative has the right to request an informal conference with the Department or Community Action Agency before the hearing date. This conference may be used to resolve the issue informally or to provide the appellant with information about the hearing or actions. The conference will not affect the appellant's right to a hearing or the time limits for the hearing. After the conference, the hearing ~~*shall*~~ will be held unless the appellant withdraws the appeal, or the Department withdraws the action contested by the appellant. ~~*(3-30-01)*~~(____)

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

**204. TIME LIMITS FOR COMPLETING HEARINGS.**
The Department ~~*shall*~~ must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing ~~*shall*~~ will be held within thirty (30) days from the date the hearing request is received. The Department ~~*shall*~~ will expedite hearing requests from appellants such as migrant farm workers who are planning to move before the hearing decision would normally be reached. ~~*(3-30-01)*~~(____)

**205. APPEAL OF AUTOMATIC ADJUSTMENTS.**
An appeal ~~*shall*~~ will be dismissed if the hearing officer determines that the sole issue is an automatic grant adjustment, change in rule that affects benefit amount or eligibility, or reduction of Medicaid services under state or federal law. ~~*(3-30-01)*~~(____)

**206. CONSOLIDATED HEARING.**
When there are multiple appeals or a group appeal involving same change in law, rules, or policy, the hearing officer ~~*shall*~~ will hold a consolidated hearing. ~~*(3-30-01)*~~(____)

**207. POSTPONEMENT OF FOOD STAMP HEARINGS.**
An appellant may request, and ~~*shall*~~ be granted a postponement of a hearing, not to exceed thirty (30) days. The time limit for the Department's response shall be extended for as many days as the hearing is postponed. ~~*(3-30-01)*~~(____)

**208. -- 249. (RESERVED).**

**250. FOOD STAMPS DISQUALIFICATION HEARINGS.**
A disqualification hearing ~~*shall*~~ will be scheduled when the Department has evidence that an individual has allegedly committed one (1) or more acts of intentional program violations (IPV). ~~*(3-30-01)*~~(____)

**251. COMBINING DISQUALIFICATION HEARING AND BENEFIT HEARING.**
The hearing officer ~~*shall*~~ must consolidate a hearing regarding benefits or overpayment and a disqualification hearing if the issues are the same or related. The appellant ~~*shall*~~ must be notified that the hearings will be combined. ~~*(3-30-01)*~~(____)

**252. RIGHT NOT TO TESTIFY.**
The hearing officer ~~*shall*~~ must advise the appellant that he may refuse to answer questions during a disqualification hearing. ~~*(3-30-01)*~~(____)

**253. FAILURE TO APPEAR.**
If an appellant or representative fails to appear at a disqualification hearing or cannot be located, the hearing ~~*shall*~~ will be conducted in his absence. The Department ~~*shall*~~ must present proof that advance notice of the hearing was mailed to the appellant's last known address. The hearing officer ~~*shall*~~ must consider the evidence and determine if an IPV occurred based solely on the information provided by the Department. The appellant has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. If an IPV had been established, but the hearing officer determines the appellant had good cause for not appearing, the previous decision ~~*shall*~~ will be void and a new hearing ~~*shall*~~ will be conducted. The previous hearing officer may conduct the new hearing. ~~*(3-30-01)*~~(____)

**254. STANDARD FOR DETERMINING INTENTIONAL PROGRAM VIOLATIONS.**
The determination that an intentional program violation has been committed ~~*shall*~~ must be established by clear and convincing evidence that the appellant committed or intended to commit an IPV. ~~*(3-30-01)*~~(____)

**255. -- 299. (RESERVED).**

**300. DIVISION OF MEDICAID - REQUEST FOR ADMINISTRATIVE REVIEW.**
An action relating to licensure or certification, billing or reimbursement ~~*shall be*~~ is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request ~~*shall*~~ must be signed by the licensed administrator of the facility or by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties ~~*shall*~~ must clarify and attempt to resolve the issues at the review conference. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. A written decision by the Department ~~*shall*~~ will be furnished to the facility or provider. ~~*(3-30-01)*~~(____)

**301. SCOPE OF HEARING.**
If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review ~~*shall*~~ will be admissible in the appeal hearing. ~~*(3-30-01)*~~(____)

**302. -- 399. (RESERVED).**

**400. DIVISION OF HEALTH -- LABORATORIES.**
A notice of grounds for denial, suspension, revocation or renewal ~~*shall*~~ becomes final and effective unless the applicant or responsible party files a written appeal by registered or certified mail within fourteen (14) days of receipt of the notice. A hearing ~~*shall*~~ will be held not more than twenty-eight (28) days from receipt of the appeal**.** The applicant or responsible person ~~*shall*~~ will receive at least fourteen (14) days of notice of the hearing date. If the Department finds that the

public health, safety or welfare imperatively requires emergency action, and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered. ~~*(3-30-01)*~~(____)

**401. REPORTABLE DISEASES.**
An order or restriction as specified in IDAPA 16.02.10, Subsections 015.05 through 015.10, "Idaho Reportable Diseases," ~~*shall*~~ becomes final and effective unless an appeal is filed within five (5) working days after the effective date of the order or restriction. ~~*(3-30-01)*~~(____)

**01. Conduct of Hearing**. The Department may take whatever precautions and make whatever arrangements are necessary for the conduct of such hearing to insure that the health of participants and the public is not jeopardized. (3-30-01)

**02. Review**. Any person directly affected by an order or restriction may file exceptions to the Director's determination, which ~~*shall*~~ will be reviewed by the Board. The order or restriction ~~*shall*~~ remains effective unless rescinded by the Board. ~~*(3-30-01)*~~(____)

**402. FOOD ESTABLISHMENTS.**
~~*A notice of action or intended action to deny, suspend, revoke, or fail to renew a license shall become final and effective unless an appeal is filed with the appropriate health district by the applicant or license holder within fourteen (14) days of receipt of the notice. The health district shall conduct an administrative review and issue a decision, which shall become final and effective unless an appeal is filed with the Department within fourteen (14) days. If an appeal is received timely, a hearing shall be scheduled and a decision issued within twenty-one (21) days of receipt of the appeal.*~~ *Appeal procedures will be as provided in Section 861, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments".* ~~*(3-30-01)*~~(____)

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.05.05 - CRIMINAL HISTORY AND BACKGROUND CHECKS IN LONG TERM CARE SETTINGS

### DOCKET NO. 16-0505-0501 (NEW CHAPTER)

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is October 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 56-1004A, Idaho Code.

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

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the original temporary and proposed text are published in this bulletin. The original text of the temporary and proposed rules was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 258 through 261**.

**The changes made to the rules are because of comments and concerns received from long term care facility operators during the comment period and during training sessions for the criminal history and background checks. The individual is available to work under supervision when a self declaration has been completed, notarized and no designated crimes have been disclosed. The individual cannot work unsupervised until the Department has received the notarized self declaration and fingerprint card within 20 days from the date the self declaration is notarized**.

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

**The general fund will not be impacted by this rule change. Funds for this project are being paid through a federal grant**.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1), and 56-1004A, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the

following reasons:

**This temporary rule is necessary to protect the public health and safety of individuals living in long term care settings and to meet the federal grant guidelines**.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule contact Mond Warren at (208) 334-5997.

DATED this 24th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

## *The Following Notice Was Published With The Temporary and Proposed Rule*

**EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2005.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-1004A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2005.

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

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

**This new chapter of rule identifies individuals with direct patient access in long term care settings who will be required to pass the Department's criminal history and background checks on or after October 1, 2005. These checks will help protect the health and safety of Idaho's vulnerable population living in long term care settings. This new chapter of rule aligns Department rules with 2005 Legislation adopted in Senate Bill 1196 authorizing the Department to participate in a federal grant pilot project from October 1, 2005 through September 30, 2007.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 56-1004A, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**This temporary rule is necessary to protect the public health and safety of individuals living in long term care settings and to meet the federal grant guidelines.**

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

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

**The general fund will not be impacted by this rule change. Funds for this project are being paid through a federal grant**.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, formal negotiated rulemaking was not conducted. Informal negotiations were held with long term care facilities, providers, and associations for these facilities, and advocacy groups for vulnerable individuals.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Mond Warren, at (208) 334-5997.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 17th day of June, 2005.

**THE FOLLOWING IS THE TEXT FOR THE PENDING RULE**

**IDAPA 16**
**TITLE 05**
**CHAPTER 05**

## 16.05.05 - CRIMINAL HISTORY AND BACKGROUND CHECKS IN LONG TERM CARE SETTINGS

### 000. LEGAL AUTHORITY.

The Idaho Legislature under Section 56-1004A, Idaho Code, has granted the Department of

Health and Welfare the power and authority to participate in a federal pilot project to conduct criminal history and background checks for individuals in long term care settings that have direct patient access. The provisions of this rule will be effective from October 1, 2005 through September 30, 2007, or until federal funding is no longer available. (10-1-05)T

**001. TITLE, SCOPE AND POLICY.**

**01. Title**. The title of this chapter is IDAPA 16.05.05, "Criminal History and Background Checks in Long Term Care Settings". (10-1-05)T

**02. Scope**. These rules are established to assist in the protection of children and vulnerable adults by requiring criminal history and background checks of individuals who may have access to or who provide care or services to those populations in long term care settings. (10-1-05)T

**03. Policy**. It is the Department's policy when doing criminal history and background checks based on the fingerprints of the individual and a self-declaration application, to use information obtained from the Federal Bureau of Investigation, the National Criminal History Background Check System, Bureau of Criminal Identification, the statewide Child Protection Central Registry, Adult Protection findings, Sexual Offender Registries, Idaho Department of Transportation Driving Records, the Nurse Aide Registry, findings from other states, the Medicaid/Medicare exclusion list, or other state or government sources. (10-1-05)T

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations associated with this chapter of rules. (10-1-05)T

**003. ADMINISTRATIVE APPEALS.**
Appeals and proceedings are governed by the Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (10-1-05)T

**004. INCORPORATION BY REFERENCE.**
The following are incorporated by reference into this chapter of rules. (10-1-05)T

**01. IDAPA 16.05.06.** IDAPA 16.05.06 "Rules Governing Mandatory Criminal History Checks". This chapter of rule may be found at http://www2.state.id.us/adm/adminrules/rules/idapa16/0506.pdf. (10-1-05)T

**02. Public Law 108-173.** Public Law 108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. This law may be found on the CMS website at "http://www.cms.hhs.gov/medicaid/survey-cert/307.pdf. (10-1-05)T

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

**01. Office Hours**. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (10-1-05)T

**02. Mailing Address**. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-05)T

**03. Street Address**. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho83702. (10-1-05)T

**04. Telephone**. (208) 334-5500. (10-1-05)T

**05. Internet Website Address**. Department Internet address is: http://www.healthandwelfare.idaho.gov. (10-1-05)T

***06. Criminal History Unit**. The Criminal History Unit may be contacted as listed below:* *(10-1-05)T*

***a.*** *Address: 823 Park Center Way, Nampa, ID 83651;* *(10-1-05)T*

***b.*** *Phone: (208) 442-8353; Toll Free: 1-800-340-1246; FAX: (208) 442-8352; and* *(10-1-05)T*

***c.*** *Website: www.chu.dhw.idaho.gov.* *(10-1-05)T*

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

**01. Confidential Records**. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. (10-1-05)T

**02. Public Records**. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. ~~*Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all p*~~*P*ublic records in the custody of the Department of Health and Welfare are subject to disclosure*, unless otherwise exempted by state or federal law.* ~~*(10-1-05)T*~~*(10-1-05)T*

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

**010. DEFINITIONS AND ABBREVIATIONS.**

**01. Criminal History and Background Check**. The criminal history and background check is a fingerprint based check as defined in IDAPA 16.05.06. "Rules Governing Mandatory Criminal History Checks". (10-1-05)T

**02. Department**. The Idaho Department of Health and Welfare. (10-1-05)T

**03. Direct Patient Access Individual**. An individual who has direct access to a patient or resident in a long term care setting through employment or contract. (10-1-05)T

**04. Federal Pilot Project**. The federal pilot project means the activities authorized by

Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Public Law 108-173, which provides grant funding to Idaho to conduct background checks on employees and contractors who have direct patient access to individuals in long term care settings. (10-1-05)T

**05. Long Term Care Settings**. For the purpose of these rules and the federal pilot project, long term care settings include: (10-1-05)T

**a.** Home Health Agencies; (10-1-05)T

**b.** Hospices; (10-1-05)T

**c.** Hospitals with swing beds; (10-1-05)T

**d.** Intermediate Care Facilities for the Mentally Retarded (ICFs/MR); (10-1-05)T

**e.** Nursing Facilities and Residential Care or Assisted Living Facilities, not withstanding the exclusion of these facilities under IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," Subsection 015.02.a. Such exclusion will not apply as long as this chapter of rule is in effect. (10-1-05)T

**011. -- 049. (RESERVED).**

**050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.**
Fees and costs for criminal history and background checks for direct patient access individuals participating in the federal pilot project are paid for by the federal grant as provided in Public Law 108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. (10-1-05)T

**051. -- 099. (RESERVED).**

**100. CRIMINAL HISTORY AND BACKGROUND CHECKS.**

**01. Direct Patient Access Individuals**. Employees and contractors, having direct patient access to individuals in long term care settings, must have criminal history and background checks if they are hired or contracted with after October 1, 2005. (10-1-05)T

**02. Excluded Individuals.** Volunteers and any individual who does not have a contract with the facility or provider and is exclusively providing services in a long term care setting through a private arrangement or contract, are not required to have a criminal history and background check under this chapter of rule. (10-1-05)T

**101. PROCEDURES FOR COMPLIANCE WITH MANDATORY CRIMINAL HISTORY AND BACKGROUND REQUIREMENTS.**
Direct patient access individuals who are hired or contracted with on or after October 1, 2005, in long term care settings are required to follow procedures and be in compliance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (10-1-05)T

***102. SELF DECLARATION AND FINGERPRINT REQUIREMENT.***
*A notarized self declaration and fingerprint card must be submitted to the Department for a criminal history and background check.* *(10-1-05)T*

***01.Access to Patients or Residents****. A direct patient access individual hired or contracted with to provide services must complete a self declaration and have the self declaration notarized before having access to patients. Once the self declaration is complete, a direct patient access individual may only have supervised access to patients or residents until the fingerprints are submitted to the Department. If a designated crime listed in IDAPA 16.05.06 "Rules Governing Mandatory Criminal History Checks," has been disclosed, the individual cannot have access to residents without a clearance by the Department.(10-1-05)T*

***02. Submission of the Self Declaration and Fingerprints to the Department****.* *(10-1-05)T*

***a.*** *The completed self declaration and fingerprint card must be submitted to the Department within twenty (20) days of the self declaration being notarized.* *(10-1-05)T*

***b.*** *The self declaration may be completed online and the fingerprints collected by the Department, or the self declaration may be signed, notarized and submitted to the Department with the ten (10) rolled fingerprint card.* *(10-1-05)T*

**10~~2~~3. -- 999. (RESERVED).**

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

### DOCKET NO. 16-0601-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-805(2), 56-1003, and 56-1004, Idaho Code; also 42 U.S.C. 673C(3).

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 162 through 164**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5700.

DATED this 3rd day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

### *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, and 56-1004, Idaho Code. Section 56-805(2), Idaho Code, and Title IV, Part E, Federal Payment for Foster Care and Adoption Assistance, Section 473(C)(3), (42 U.S.C. 673C(3)).

**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 Wednesday, September 21, 2005.

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

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

**The proposed rule change will help prevent an adoptive family from inadvertently, and without notice, losing benefits for which they are eligible. Specifically, the proposed change deletes language stating that adoption assistance benefits, whether funded by Title IV-E or state general funds, may be suspended or terminated if the adoptive family fails to complete the annual recertification process. This change will help maintain the stability of the adoption and preserve the incentive function of adoption assistance benefits for hard-to-place children**.

**Corrections are also being made in the sections of rule required under the Administrative Procedure Act**.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done to align rules with federal code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 28, 2005.

DATED this 3rd day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**000. LEGAL AUTHORITY.**
~~*Pursuant to Sections 16-1624, 16-2001, 16-2402, 56-202(b), 56-203b, 56-204(a) and 56-204A, 56-1003, and 56-1004, Idaho Code, the Idaho Legislature has delegated to the Department the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need. These services include but are not limited to provisions for child protection services, termination of parental rights, foster care, adoption services, children's mental health services, institutional and group care, services for unwed parents, and payments for foster care and day care. In addition, pursuant to Sections 39-105(1), 39-119, 56-803, 16-1822, and 16-1827, the Idaho Legislature has delegated to the Board of Health and Welfare the responsibility to establish and enforce rules governing licensing, fees for services, and adoption of "hard-to-place" children. Authority to establish and enforce rules governing and implementing the Interstate Compact on Placement of Children and Interstate Compact on Adoption and Medical Assistance is vested in the Compact Administrators, pursuant to Sections 16-2102, Article VII, and 39-7501, Idaho Code, respectively.*~~
The Idaho Legislature has delegated to the Department, or the Board of Health and Welfare, or both jointly, the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need, under the following Sections: 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, and 56-1004, Idaho Code.
~~*(3-18-99)*~~(  )

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

**003. ADMINISTRATIVE APPEALS.**
Administrative appeals ~~*shall be*~~ are governed by the ~~*Idaho Department of Health and Welfare Rules*~~ provisions of~~,~~ IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~*(3-18-99)*~~(  )

**004. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**
~~*Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".*~~ ~~*(3-18-99)*~~

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

**02. Public Records**. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless

otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

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

**007. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

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

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

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

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

**05. Internet Website**. The Department's internet website is found at http://www.healthandwelfare.idaho.gov. ( )

**~~007~~008. -- 009.(RESERVED).**

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

**911. ADOPTION ASSISTANCE PROGRAM AGREEMENT.**
A written agreement shall be negotiated and fully executed between the Department and adopting family prior to the finalization of adoption and implementation of benefits. (3-18-99)

**01. Agreement Specifications**. The agreement shall specify the following: the type and amount of assistance to be provided and that it may be adjusted periodically with the concurrence of the adoptive parent(s) to reflect changing circumstances; the date for annual renewals and that the renewal depends on availability of funds; and that payments shall begin after the final certified copy of the Order of Adoption is received by the Department. The adoptive parent(s) are required to inform the state agency of any circumstances which would make them ineligible for adoption assistance payments, or eligible for adoption assistance payments in a different amount. (5-3-03)

**02. ~~Suspension or~~ Termination of Adoption Assistance**. Adoption assistance ~~may~~ will be ~~suspended or~~ terminated if ~~the adoptive family fails to compete the annual recertification~~

~~*process,*~~ the adoptive parent(s) no longer have legal responsibility for the child as a result of termination of parental rights, the child is no longer receiving any financial support from the parents, or the child has reached the age of eighteen (18) years regardless of the child's educational status. ~~*(5-3-03)*~~(____)

**03. Adoption Assistance Follows the Child**. If the adoptive parents are located in a state other than Idaho, or move out of Idaho with the child, the adoption assistance payments initiated by Idaho will continue for the child. If the child is IV-E or state-funded adoption assistance eligible, referral for Medicaid or other state medical insurance and social service benefits will be forwarded to the new state of residence through the Interstate Compact on Adoption and Medical Assistance. Non IV-E eligible children receiving a state adoption subsidy, may not be eligible for Medicaid in a state other than Idaho. (5-3-03)

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

### DOCKET NO. 16-0602-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1004 and 56-1005(8), Idaho Code, and Section 39-1217, Idaho Code, regarding the maximum Department visitation interval under the Child Care Licensing Reform Act.

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 368 through 370**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5700.

DATED this 26th day of October, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

## *The Following Notice Was Published With The 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 Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1004 and 56-1005(8), Idaho Code, and Section 39-1217, Idaho Code, regarding the maximum Department visitation interval under the Child Care Licensing Reform Act.

**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 Wednesday, October 19, 2005.

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

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

**Recent improvements initiated by the Department in children's programs have made the current semi-annual licensing visit requirement redundant. The Department can more effectively meet the growing need for foster care and continue to maintain the health, safety, and welfare of children in care with current staff resources by changing this licensing requirement**.

**For foster homes, children's agencies, children's therapeutic outdoor programs, and children's residential care facilities the maximum length of time allowed between on-site licensing visits by the Department is being increased from 6 months to 12 months, as allowed under statute. However, monitoring visits to foster homes will continue to be conducted at least once every other month and agencies or facilities with deficiencies will be visited on the schedule required under their plan of correction. This assures safe, quality care for children in care while making more efficient use of the Department's licensing workers**.

**Adds to and makes corrections in the required rule sections at the beginning of the chapter**.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is being made simply to increase administrative efficiency under the existing statutory requirements.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Morris at (208) 334-5700.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2005.

DATED this 5th day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**000. LEGAL AUTHORITY.**
Pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-100~~4~~3 and 56-1005(8), Idaho Code, the Idaho Legislature has granted authority to the Department and Board of Health and Welfare to adopt and enforce rules governing standards for licensure or certification of foster homes, children's agencies and children's residential care facilities. ~~*(3-30-01)*~~(____)

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

**003. ADMINISTRATIVE APPEALS.**
Administrative ~~*A*~~appeals ~~*shall be*~~ are governed by the ~~*Idaho Department of Health and Welfare Rules*~~ provisions of, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~*(3-30-01)*~~(____)

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

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

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

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

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

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

**05.** **Internet Website**. The Department's internet website is found at http://www.healthandwelfare.idaho.gov. ( )

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

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

**02.** **Public Records**. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**00~~5~~7. POLICY.**
It is hereby declared to be the policy of this state to insure that children of this state shall receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is predicated upon the fact that children are vulnerable, not capable of protecting themselves, and when their parents for any reason have relinquished their care to others, there arises the possibility of certain risks to the children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration. (3-30-01)

**008. -- 009. (RESERVED).**

**~~006~~010.DEFINITIONS.**
For the purposes of the rules contained in this Chapter, the following terms are used as defined below: (3-30-01)

***This Section is being renumbered only - there are no substantive changes to Subsections 010.01 through 010.47***

**~~007~~011. -- 099.(RESERVED).**

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

**104. MANDATORY VISITATIONS.**

~~*Pursuant to Section 39-1217, Idaho Code, the Department or other licensing authority shall visit each foster home, child care facility or children's agency as often as it is deemed necessary to assure conformity with the rules for child care licensing.*~~ In accordance with Section 39-1217, Idaho Code, ~~*T*~~the Department or other licensing authority ~~*shall*~~ must visit, and must be given access to, the premises of each licensed foster home, licensed children's agency, licensed children's therapeutic outdoor program, and licensed children's residential care facility ~~*and children's agency*~~ as often as deemed necessary or desirable by the Department to assure conformity with the requirements in this chapter of rules but, in any event, at intervals not to exceed ~~*six*~~ twelve (~~*6*~~12) months. ~~*(3-30-01)*~~(____)

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

**873. -- 99~~*6*~~9. (RESERVED).**

~~***997. CONFIDENTIALITY OF RECORDS.***~~
~~*All records obtained and used by the Department in connection with activities related to these rules must be held confidential in accordance with the IDAPA 16.05.01, "Use and Disclosure of Department Records".*~~ ~~*(3-30-01)*~~

~~***998. – 999. (RESERVED).***~~

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.06.08 - RULES AND MINIMUM STANDARDS FOR DUI EVALUATORS

### DOCKET NO. 16-0608-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 18-8005(9), 39-111 and 56-1003, Idaho Code.

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

**The proposed rules have been amended in response to public comment received. The definition for the term "defendant" was expanded to more clearly state their legal status with the courts. The term "Advanced Certified Alcohol/Drug Counselor" was added to ensure this group was included with others eligible for a DUI License. It was also requested to add an Idaho Licensed Marriage and Family Therapist or a Registered Marriage and Family Therapist Intern to the list of qualified persons. The last item amended was changing the length of time to maintain public files from three (3) years to five (5) in order to ensure consistency within the chapter of rule**.

**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, 2005 Idaho Administrative Bulletin, Vol. 05, pages 262 through 272**.

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

There is no fiscal impact to the state general fund due to this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Sherry Johnson at (208) 334-5934.

DATED this 10th day of November, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone;
(208) 332-7347 fax
kovachs@idhw.state.id.us e-mail


## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections, 18-8005(9), 39-111 and 56-1003, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2005.

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

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

**This rulemaking is needed to improve the quality of DUI evaluations performed by qualified professionals licensed by the Department. This will be accomplished by strengthening and clarifying the criteria for initial application and renewal of a license. The rule assures that evaluations performed for those accused of driving under the influence meet the demands of the courts. These rule changes will benefit DUI Evaluators by providing clear information on the licensure process, continuing education requirements, and statistical reporting. The safety of Idahoans will be improved if those convicted of driving under the influence are properly assessed and referred to appropriate services.**

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

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

There is no fiscal impact to the state general fund due to this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, formal negotiated rulemaking was not conducted; however, informal negotiated rulemaking was conducted by

having key stakeholders review the text and provide feedback on the content.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sherry Johnson at (208) 334-5934.

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, 2005.

DATED this 29th day of June, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**16.06.08 - RULES AND MINIMUM STANDARDS FOR DUI EVALUATORS**

**000. LEGAL AUTHORITY.**
Under authority vested in the Idaho ~~*State Board*~~ Department of Health and Welfare by Title 18, Chapter 80, Section 18-8005(~~5~~9), the Director of the Department of Health and Welfare by Section 56-1003, Idaho Code and in the Idaho Board of Health and Welfare by ~~*Title 39, Chapter 3*~~ Section 39-111, Idaho Code, the Department and the Board adopts the following rules for DUI evaluators in the state of Idaho. ~~*(4-5-00)*~~(  )

**001. TITLE AND SCOPE.**

**01. Title**. These rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16.06.08, "Rules and Minimum Standards for DUI Evaluators". (4-5-00)

**02. Scope**. Under Section 18-8005(9), Idaho Code, the Department is given the authority to approve DUI Evaluators. The Department has determined to put in place a licensing process for approval of DUI Evaluators. It is the purpose of these rules to establish minimum standards for the approval, issuance, renewal, denial, suspension or revocation of the DUI evaluator license, to establish licensing fees charged by the Department for applicants seeking approval, evaluators seeking renewal, and to set forth rules for conducting evaluations by licensed evaluators. Licensed DUI evaluators are considered by the Department, under these rules, qualified to provide DUI evaluations of persons who plead guilty to, or are found guilty of, a violation of Section 18-8004 or Section 18-8006, Idaho Code. ~~*(4-5-00)*~~(  )

~~***03. Approved Services****. DUI evaluators shall be considered by the Department, pursuant to these rules, to provide DUI evaluations of persons who plead guilty to, or are found guilty of, a violation of Section 18-8004 or Section 18-8006, Idaho Code.* *(4-5-00)***~~

**002. WRITTEN INTERPRETATIONS.**
There are no written interpretations that apply to these rules. (  )

**~~002~~003.ADMINISTRATIVE APPEALS.**
~~*Contested case*~~ All administrative appeals ~~*shall be*~~ are governed by ~~*Idaho Department of Health and Welfare Rules,*~~ provisions of IDAPA 16.05.03, ~~*Sections 600, et seq.,*~~ "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~*(4-5-00)*~~(____)

**004. INCORPORATION BY REFERENCE.**
No documents have been incorporated by reference into these rules. (____)

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

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

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

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

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

**05. Internet Website**. The Department's internet website is found at http://www.healthandwelfare.idaho.gov/. (____)

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**
Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". (____)

**~~003~~007. -- ~~099~~009.(RESERVED).**

**~~100~~010.DEFINITIONS.**

**01. Certified, Credentialed or Licensed Alcohol/Drug Counselor**. A counselor possessing voluntary certification or licensure by a recognized state or national alcohol/drug abuse/addiction counselor credentialing or certifying organization. Knowledge and skills may be acquired through a combination of specialized training, education and experience. (____)

**02. Continuing Education**. Department approved course work which may be from an accredited university or college in alcohol and drug abuse studies, social work, psychology, or counseling and guidance; workshops or seminars on the subjects of alcohol and drug evaluation, treatment or prevention issues sponsored by state licensed facilities, state or federal government or other accredited educational institutions, and distance education classes. All continuing education hours must be specific to substance use disorders and their evaluation and treatment or related to chemical dependency counseling. (____)

**03. Defendant**. *A* Person *who has* been *charged with, pled* guilty *to, or found guilty of*

driving under the influence of alcohol, drugs or any other intoxicating substances*; or any crime as set forth under Title 18, Chapter 80*, Idaho Code. ( )

**0~~1~~4. Department**. The state of Idaho Department of Health and Welfare. (12-31-91)

**0~~2~~5. Director**. The Director of the state of Idaho Department of Health and Welfare or his designee. (12-31-91)

**0~~3~~6. DUI**. Driving while under the influence of alcohol, drugs or intoxicating substances. (12-31-91)

**0~~4~~7. DUI Evaluation**. The process of obtaining information through a face-to-face interview with the defendant in order to determine the nature and the extent of the ~~*offender's*~~ defendant's use of alcohol or drugs and to recommend appropriate risk reduction education or treatment services. ~~*(12-31-91)*~~( )

**08. Idaho Board of Alcohol/Drug Counselor's Certification, Inc. (IBADCC)**. Affiliated with the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), the IBADCC is the certifying agency that oversees credentialing of Certified Alcohol/Drug Counselors (CADC), *Advanced Certified Alcohol/Drug Counselors (ACADC)*, Certified Clinical Supervisors (CCS), and Certified Prevention Specialists (CPS) in the state of Idaho. The IBADCC may be contacted at the following address and telephone number: 270 N. 27th Street, Suite B, Boise, ID 83702 (208) 395-1078. ( )

**0~~5~~9. Licensed DUI Evaluator**. The licensed person qualified to provide diagnostic impression, assessment, or evaluation services to DUI ~~*offenders*~~ defendants in the state of Idaho. For the purposes of these rules and regulations, a licensed DUI evaluator may constitute a facility. ~~*(4-5-00)*~~( )

~~*06*~~**10. Licensee**. The person who has been approved and issued a license ~~*pursuant to*~~ under S~~*ub*~~section 200~~*.02*~~ of these rules. ~~*(12-31-91)*~~( )

~~***07. Licensing Agency**. The state of Idaho Department of Health and Welfare.*~~ ~~*(12-31-91)*~~

~~***08. Operating License**. A one (1) year license issued by the licensing agency to DUI evaluators complying with these rules.*~~ ~~*(12-31-91)*~~

~~*09*~~**11. Peer Review**. ~~*The process by which all DUI evaluators submit samples of their evaluations for an annual quality assurance review by a team of DUI evaluators and Substance Abuse Program staff.*~~ A quality assurance process by which a team of DUI Evaluators and Department staff convene to review evaluations for consistency with minimum standards as described in Section 700 of these rules. ~~*(4-5-00)*~~( )

**1~~0~~2. Quality Assurance Process**. The combination of technical and peer reviews of evaluations ~~*conducted by a licensed DUI evaluator*~~ to assure the evaluations consistently meet minimum standards. ~~*(4-5-00)*~~( )

~~***11. Substance Abuse Related Continuing Education**. Department approved course work from an accredited university or college in alcohol and drug abuse studies, social work, psychology, or counseling and guidance; workshops or seminars on the subjects of alcohol and drug evaluation, treatment or prevention issues sponsored by state licensed facilities, state or federal government or other accredited educational institutions. (4-5-00)*~~

**1~~2~~3. Substance Related Violation**. Any withheld judgment or conviction in which substance use is identified as a contributing factor. (4-5-00)

**1~~3~~4. Technical Review**. The quality assurance process of the Department evaluating the accuracy, legibility, appropriateness, and completeness of Department required forms and reporting formats used during DUI evaluations. ~~*(4-5-00)*~~(____)

**~~*101*~~011. -- 199.(RESERVED).**

**200. LICENSURE.**

**01. Application for a~~*n Operating*~~ License**. An individual seeking ~~*approval as*~~ a DUI Evaluator license must submit a completed application on forms provided by the Department, accompanied by the documents noted in Subsection ~~*400*~~225.02. In addition, the applicant must submit a statement of fees to be charged for services and an application fee of twenty-five dollars ($25). ~~*(4-5-00)*~~(____)

**a.** An application packet will not be processed until it is complete and all required documentation is received. (____)

**b.** The application fee is not refundable and will not be returned. (____)

**c.** By signing the application the individual represents that the information is true and accurate and they accept the responsibility to comply with these rules. (____)

**d.** The individual signs a conflict disclosure or acknowledgement that the individual cannot perform both the evaluation and provide the recommended services unless they have a waiver from the court. (____)

**02. Application Review~~*-and Issuance of Operating License*~~**. The Department must initiate a review ~~*including an investigation*~~ within fifteen (15) days of receipt of the forms, documents, and fee described in Subsection 200.01. ~~*The result of the review*~~ A determination by the Department as to whether an ~~*applicant*~~ individual has complied with this chapter must be rendered within forty-five (45) days from the date of receipt of the completed application. ~~*The Department will arrange testing for applicants found to have complied with this chapter. Upon successful completion of testing, the Department will issue an operating licence. (4-5-00)*~~(____)

**03. DUI Evaluator Examination**. Upon completion of the application review, where the individual meets minimum qualifications, the individual will be issued notification that they are eligible to take the examination. The Department will arrange testing for individuals found to have complied with this chapter. Upon successful completion of testing and meeting all requirements set forth in the rules, the Department will issue a license. The individual may take

the examination twice during a twelve (12) month period from the date of the notification letter. An individual who fails the examination twice during the twelve (12) month period may submit a new application and reapply for a license at the end of the twelve (12) months following the notification letter. (____)

**0~~3~~4. License Period, Posting Requirement, and Notification of Changes**. When the individual has met all of the qualifications and passed the examination the Department will issue a license. The license, unless suspended or revoked, will be in effect for a period not to exceed one (1) calendar year from the date of issue printed on the license. The license will apply only to the person named therein and is not transferable. The license must be posted in a conspicuous location for client observation. The Department ~~*shall*~~ must be notified by a licensee in writing of any changes in address, phone number or fees within thirty (30) days of the change.
~~*(4-5-00)*~~(____)

~~***04. Expiration and Renewal of License****. No license will be renewed, except as provided in Subsections 200.04 and 400.04.* *(4-5-00)*~~

~~***a.*** *At least sixty (60) days prior to the expiration of the license, the licensee will apply for a renewal of the license on forms provided by the Department. The application shall be accompanied by a twenty-five dollar ($25) renewal fee payable to the Department.* *(3-10-88)*~~

~~***b.*** *The licensee must attend a minimum of twelve (12) hours of substance abuse related continuing education each year, and will provide verification of attendance with the renewal application.* *(4-5-00)*~~

~~***c.*** *Following the application review, the licensee meeting the requirements of this chapter, will have their licenses renewed for a period not to exceed one (1) year.* *(3-10-88)*~~

~~***05. Denial, Suspension or Revocation of License****. The Department may deny, suspend or revoke the license of a DUI evaluator for any of the following reasons:* *(3-10-88)*~~

~~***a.*** *If an applicant has a substance-related violation within the past two (2) years.* *(4-5-00)*~~

~~***b.*** *If a licensee has a substance-related violation, the license shall be revoked for a period of two (2) years.* *(4-5-00)*~~

~~***c.*** *If the licensee has failed to comply with any portion of this chapter.* *(4-5-00)*~~

~~***d.*** *If the licensee demonstrates a conflict of interest by providing both the DUI evaluation and treatment or by referring the client to the licensee's employer or business associate, unless this requirement is waived in writing by the sentencing court.* *(4-5-00)*~~

~~***e.*** *If there has been a criminal, civil, or administrative determination that the licensee has committed misrepresentation in the preparation of the application or other documents required by the Department.* *(3-10-88)*~~

~~***f.*** *If there has been a criminal, civil, or administrative determination that the licensee*~~

~~*has committed fraud or gross negligence while operating as a licensed DUI evaluator.* (3-10-88)~~

~~***g.*** *If an applicant or licensee has been convicted of a felony within the past three (3) years.* (4-5-00)~~

~~***h.*** *If there has been a criminal, civil, or administrative determination that the licensee has committed, permitted, or aided and abetted the commission of any illegal act while holding a DUI Evaluator license.* (4-5-00)~~

~~***i.*** *If the licensee demonstrates inadequate knowledge and/or performance by repeated substandard peer and quality assurance reviews.* (4-5-00)~~

~~***j.*** *If the licensee fails to furnish any data, information or records as requested.* (3-10-88)~~

~~***k.*** *If the licensee refuses or fails to participate in the peer review and quality assurance process.* (4-5-00)~~

~~***l.*** *If the licensee was first issued an operating license prior to June 30, 2000 and fails to meet minimum qualification standards within the sunset provision under Section 400.04.* (4-5-00)~~

~~***m.*** *Upon a second revocation, no further licenses shall be issued.* (4-5-00)~~

~~***06.*** ***Notice and Hearing****. The Department must give the licensee notice of intent to suspend, deny, or revoke approval, the right to appeal in accordance with the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 600, et seq., "Rules Governing Contested Cases and Declaratory Rulings".* (4-5-00)~~

~~***07.*** ***Return of License****. The DUI evaluator license is the property of the state of Idaho and must be returned to the Department immediately upon the denial, suspension, or revocation of the license, or if the operation is discontinued by the voluntary action of the licensee.* (3-10-88)~~

**05.** **Responsibility of Licensee**. A licensee is responsible for knowing the standards and rules applying to his license at all times. ( )

**06.** **Quality Assurance Process Participation**. A licensee must participate in the quality assurance process as requested by the Department. ( )

**201. -- ~~299~~224.(RESERVED).**

**225. QUALIFICATIONS.**
In addition to the requirements in Section 200 of these rules, an individual must also meet the following qualifications for licensure. ( )

**01.** **Evaluator Qualifications**. In order for the applicant to be licensed as a DUI evaluator, the applicant must meet the following criteria: ( )

**a.** Has professional experience supervised by a Certified, Credentialed or Licensed Alcohol/Drug Counselor in which a minimum of seven hundred twenty (720) cumulative hours were spent in the performance of alcohol/drug evaluation or treatment over the three (3) year period immediately prior to the application date; and ( )

**b.** Holds one (1) of the following professional certifications or licenses: ( )

i. Is a*n IBADCC* Certified *Alcohol/Drug* Counselor *or IBADCC Advanced Certified Alcohol/*Drug Counselor; or ( )

ii. Is an Idaho Licensed, Licensed Clinical, or Licensed Masters Social Worker; or ( )

iii. Is an Idaho Licensed Professional Counselor; and ( )

*iv. Is an Idaho Licensed Marriage and Family Therapist or Idaho Registered Marriage and Family Therapist Intern; and* ( )

**c.** Applicants must successfully pass the competency-based DUI Evaluator examination. ( )

**d.** The applicant must have attended a minimum of twenty (20) hours of Department approved continuing education course work related to substance abuse screening, assessment, confidentiality, and referral within the twelve (12) months prior to applying for a license. ( )

**02.** **Documentation**. The application submitted to the Department for licensure as a DUI evaluator must be accompanied by: ( )

**a.** A current copy of professional licenses, or certifications. ( )

**b.** A detailed employment history showing dates and hours of supervised employment experience in an alcohol/drug evaluation or treatment program, the name of the program, the name of the direct supervisor and a copy of their certification credential or license as an alcohol/drug counselor, and the nature of the duties performed. ( )

**c.** Verification of attendance at the course work described in Subsection 225.01.d. of these rules. ( )

**03.** **Examination**. The examination required by Subsection 200.03 of these rules will be administered a minimum of twice per year under the direction of the Department at times and locations to be announced by the Department. ( )

**04.** **License Granted Prior to July 1, 2006**. If an individual was granted a license prior to July 1, 2006, and met the rule requirements at that time, he may continue to have his license renewed using those qualifications until such time as his license expires without renewal or the license is revoked by the Department. ( )

**226 -- 249.** **(RESERVED).**

**250. RENEWAL OF LICENSE.**
The licensee is responsible for renewing the license in accordance with this chapter and requesting a renewal packet from the Department. No license will be renewed, except as provided in Section 250 of these rules. ( )

**01. Renewal Application**. At least sixty (60) days prior to the expiration of the license, the licensee must apply for a renewal of the license on forms provided by the Department. The Department is not responsible for notifying the licensee of these time lines and failure to receive notice from the Department does not waive or extend renewal deadlines. The application must be accompanied by a twenty-five dollar ($25) renewal fee payable to the Department.( )

**a.** A renewal packet will not be processed until it is complete and all required documentation is received. ( )

**b.** The renewal fee is not refundable and will not be returned. ( )

**c.** By signing the renewal application the individual represents that the information is true and accurate and they accept the responsibility to comply with these rules. ( )

**d.** The individual signs a conflict disclosure or acknowledgement that the individual cannot perform both the evaluation and provide the recommended services unless they have a waiver from the court. ( )

**02. Continuing Education Credits**. The licensee must participate in a minimum of twelve (12) hours of Department approved substance abuse related continuing education each year, and submit verification of continuing education credits with the renewal application. ( )

**03. Current Copy of Certification or License**. *The licensee must have a* copy of current Idaho Board of Alcohol/Drug Counselor's Certification*;* copy of Idaho Licensed, Licensed Clinical, or Licensed Masters Social Worker license*;* Idaho Licensed Professional Counselor *license; Idaho Licensed Marriage and Family Therapist license; or Idaho Registered Marriage and Family Therapist Intern license*. A licensee must at all times hold a current certification or professional license in order to meet the educational requirement in Subsection 225.01 of these rules. ( )

**04. License Renewed for One Year**. Following the application review, the licensee meeting the requirements of this chapter, will have their license renewed for a period not to exceed one (1) year. ( )

**05. Denial of Renewal**. Failure to renew a license prior to the expiration date will result in a denial of renewal and the licensee will be required to comply with the requirements and procedures for obtaining an initial license. ( )

**06. Expired License**. A person whose license has expired cannot represent themselves as a DUI Evaluator and offer or provide DUI evaluations. ( )

**07. Removal of Evaluator's Name From Directory**. Following a thirty (30) day

lapse in renewal of license, the DUI Evaluator's name will be removed from the Department's DUI Evaluator's Directory. ( )

**251. -- 274. (RESERVED).**

**275. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.**
The Department may deny, suspend or revoke the license for any of the following reasons: ( )

**01. Substance-Related Violation**. If an applicant or licensee has a substance-related violation within the past two (2) years, the license may be revoked or denied for a period of two (2) years. ( )

**02. Failure to Comply**. If the licensee has failed to comply with any portion of this chapter. ( )

**03. Conflict of Interest**. If the licensee demonstrates a conflict of interest by providing both the DUI evaluation and treatment or by referring the client to the licensee's employer or business associate, unless this requirement is waived in writing by the sentencing court. ( )

**04. Determination of Misrepresentation of Application**. If there has been a criminal, civil, or administrative determination that the applicant or licensee has committed misrepresentation in the preparation of the application or other documents required by the Department. ( )

**05. Determination of Fraud or Gross Negligence**. If there has been a criminal, civil, or administrative determination that the applicant or licensee has committed fraud or gross negligence while operating as a licensed DUI evaluator. ( )

**06. Felony Conviction**. If an applicant or licensee has been convicted of a felony within the past three (3) years. ( )

**07. Determination of Any Illegal Act**. If there has been a criminal, civil, or administrative determination that the licensee has committed, permitted, or aided and abetted the commission of any illegal act while holding a DUI Evaluator license. ( )

**08. Inadequate Knowledge or Performance**. If the applicant or licensee demonstrates inadequate knowledge, performance, or both by repeated substandard peer and quality assurance reviews. ( )

**09. Failure to Furnish Data, Information or Records**. If the applicant or licensee fails to furnish any data, information or records as requested by the Department. ( )

**10. Refusal to Participate in Quality Assurance Process**. If the applicant or licensee refuses or fails to participate in the peer review and quality assurance process. ( )

**11. Second Revocation**. Upon a second revocation, no further licenses will be issued. ( )

**12.** **Result of Department Action**. The following conditions apply as a result of action taken by the Department: ( )

**a.** A person whose license has been denied, suspended or revoked cannot offer or provide DUI evaluations and may not represent themselves as DUI Evaluators. ( )

**b.** Within thirty (30) days of the license being denied, suspended or revoked, the DUI Evaluator's name will be removed from the Department's DUI Evaluator's Directory. ( )

**13.** **Notice and Hearing**. The Department must give the applicant or licensee notice of intent to suspend, deny, or revoke approval, the right to appeal in accordance with the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 600, et seq., "Rules Governing Contested Cases and Declaratory Rulings". ( )

**14.** **Return of License**. The DUI evaluator license is the property of the state of Idaho and must be returned to the Department immediately upon the denial, suspension, or revocation of the license, or if the operation is discontinued by the voluntary action of the licensee. ( )

**276. -- 299. (RESERVED).**

**300. INSPECTIONS.**
The Department reserves the right to inspect any office, files, client records, or other materials of any licensee to ascertain compliance with these rules~~*, and with Section 18-8004(4), Idaho Code*~~. ~~*(3-10-88)*~~( )

**301. -- ~~*399*~~499.(RESERVED).**

~~***400. QUALIFICATIONS.***~~

~~***01. Qualifications of Staff****. In order for the applicant to be licensed as a DUI evaluator, the applicant shall meet the following criteria:* *(3-10-88)*~~

~~***a.*** *Has professional experience in which a minimum of seven hundred twenty (720) cumulative hours were spent in the performance of alcohol/drug evaluation or treatment over the three (3) year period immediately prior to the application date; and* *(4-5-00)*~~

~~***b.*** *Holds a baccalaureate or higher degree in an allied health field; or* *(4-5-00)*~~

~~***c.*** *Is a Certified Addictions Counselor as issued through the Idaho Board of Alcohol and Drug Counselor's Certification; or* *(4-5-00)*~~

~~***d.*** *Is an Idaho Licensed, Licensed Clinical, or Licensed Masters Social Worker; or* *(5-3-03)*~~

~~***e.*** *Is an Idaho Licensed Professional Counselor.* *(4-5-00)*~~

~~***f.*** *Applicants must successfully complete the competency-based DUI Evaluator*~~

~~*examination.*~~ ~~*(4-5-00)*~~

~~***02. Documentation****. The application submitted to the Department for licensure as a DUI evaluator shall be accompanied by:*~~ ~~*(3-10-88)*~~

~~***a.*** *A certified copy of all college transcripts; professional licenses, or certifications.*~~ ~~*(4-5-00)*~~

~~***b.*** *A detailed employment history showing dates and hours of employment experience in an alcohol/drug evaluation or treatment program, the name of the program, the name of the direct supervisor, and the nature of the duties performed.*~~ ~~*(4-5-00)*~~

~~***03. Examination****. The examination required by Subsection 400.01.f. shall be administered a minimum of twice per year under the direction of the Department at times and locations to be announced by the Department.*~~ ~~*(4-5-00)*~~

~~***04. Sunset Provision****. Licensees issued an operating license prior to June 30, 2000 must meet minimum qualification standards set in Subsection 400.01 before June 30, 2003. This includes educational and examination requirements. Licensees qualifying under this provision will provide verification on progress toward meeting the minimum education and examination standards with their annual application for renewal.*~~ ~~*(4-5-00)*~~

~~***401. – 499. (RESERVED).***~~

**500. DUI EVALUATIONS.**

**01. Record System**. The DUI evaluator must maintain a record system of client files for a minimum of ~~*three*~~ *five* (~~*3*~~5) years. Client files will minimally include the written evaluation, ~~*and*~~ supporting documents, ~~*identified in Subsections 500.02 and 500.03*~~ and use the same client identifier to correspond with the data collected for statistical reporting as described in Section 600 of these rules. ~~*(4-5-00)*~~(  )

**02. Individual DUI Evaluation**. The DUI evaluation conducted by the licensee ~~*shall*~~ must be composed of the minimum following items: ~~*(3-10-88)*~~(  )

**a.** ~~*Face sheet.*~~ All DUI evaluations ~~*shall*~~ must have a one (1) page typed summary sheet, ~~*attached to the*~~ and the evaluation report consistent with Idaho Supreme Court Misdemeanor Criminal Rule 9.4. A list of approved screening tools can be requested from the Department at the address located in Section 005 of these rules. Criminal Rule 9.4 may be found at the following website: www.isc.idaho.gov/rulestxt.htm. ~~*(4-5-00)*~~(  )

**b.** ~~*Evaluation report. All DUI evaluations shall conform to Idaho Supreme Court Misdemeanor Criminal Rule 9.4.*~~ All evaluations must include a face-to-face interview between the licensee and the defendant. ~~*(4-5-00)*~~(  )

**03. Distribution of the DUI Evaluation**. (3-10-88)

**a.** With the ~~*client's*~~ defendant's written consent, the evaluator will forward the

original evaluation directly to the court. ~~*(3-10-88)*~~(____)

**b.** The defendant ~~*shall*~~ must be provided with a copy of the DUI evaluation. ~~*(3-10-88)*~~(____)

**c.** The DUI evaluator must abide by all applicable Federal and State laws requiring confidentiality of patient/client records. (____)

~~**e**~~**d.** The DUI evaluator is prohibited from releasing the evaluation to anyone other than the Department for the purposes of compliance inspection and peer review without the written authorization of the defendant. (4-5-00)

~~**d**~~**e.** One (1) copy of the original evaluation, including all supporting documentation and associated Department required forms, must be maintained in the licensee's ~~*files*~~ record system for a minimum of five (5) years from the date the evaluation was conducted. ~~*(4-5-00)*~~(____)

~~**e**~~**f.** Photocopies of evaluations required for peer review and quality assurance will have personal identification data rendered illegible and replaced by the client number used on the statistical reporting forms. ~~*(4-5-00)*~~(____)

**501. -- 599. (RESERVED).**

**600. STATISTICAL REPORTING.**
All licensees ~~*shall*~~ must submit ~~*individual*~~ required client data ~~*on forms supplied*~~ on each defendant in the format prescribed by the Department. ~~*(3-10-88)*~~(____)

**01. Collected Information**. Specific client data information collection is to be recorded in the format prescribed by the Department. (____)

**02. Additional Forms**. It is the responsibility of the Licensee to contact the Department when additional forms are needed. (____)

**03. Data Reported Monthly**. The data is to be forwarded to the Department on a monthly basis by the fifteenth day of each month. (____)

**601. -- 699. (RESERVED).**

**700. QUALITY ASSURANCE, PEER AND TECHNICAL REVIEW.**
The Department ~~*shall*~~ will develop policies concerning the composition of peer review teams, standardized assessment tools, standardized formats, scoring scales, and recommendations for quality and performance improvements. ~~*(4-5-00)*~~(____)

**701. -- 799. (RESERVED).**

**800. ADVISORY BOARD.**
The Department ~~*shall*~~ may convene an advisory board. The advisory board consists of members from the community and the Department. The board will provide feedback on program

performance and suggestions for program improvement. ~~*The board will meet at least quarterly and provide minutes of all meetings to the State Substance Abuse Executive Council.*~~

~~*(4-5-00)*~~(____)

**801. -- ~~995~~999.(RESERVED).**

~~***996. ADMINISTRATIVE PROVISIONS.***~~

~~*Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings".* *(12-31-91)*~~

~~***997. CONFIDENTIALITY OF RECORDS.***~~

~~*Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records".* *(12-31-91)*~~

~~***998. INCLUSIVE GENDER.***~~

~~*For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.* *(3-10-88)*~~

~~***999. SEVERABILITY.***~~

~~*Idaho Department of Health and Welfare Rules, IDAPA 16.06.08, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.* *(1-1-84)*~~

# *HEALTH AND WELFARE*

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

### DOCKET NO. 16-0612-0501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 165 and 166**.

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

**It is projected that ICCP caseload growth will exceed available funds in SFY '07. By limiting the use of work search as a qualifying activity for ICCP, this rule change reduces spending for SFY '07 so that currently allocated funds will meet the anticipated caseload growth**.

**Without this rule change, it is estimated that there will be the following shortfall in Idaho Child Care Program (ICCP) funds for SFY '07 due to the anticipated caseload growth in the program: (NOTE: These are 100% federal funds.)**

**One year - $368,600**
**Five years - $1,843,000**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Genie Sue Weppner at (208) 334-5815.

DATED this 2nd day of November, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036

(208) 334-5564 phone; (208) 334-6558 fax
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## *The Following Notice Was Published With The Proposed Rule*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, September 21, 2005.

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 the current rules, parents are able to receive child care assistance indefinitely under the Idaho Child Care Program (ICCP) as long as they document that they are looking for work. This lack of a time limit on searching for work provides little incentive for them to find work and is inconsistent with the program's goal of moving people into the work force**.

**The Department is adding a three-month limit on the length of time, in a calendar year, that parents looking for work can receive child care assistance. Up to 80 hours of job search time will be allowed for each of these months**.

**This rule change gives the Department the ability to limit the amount of time parents can receive child care assistance while looking for work. This will encourage people to take jobs, conserve ICCP funds by reducing the opportunities for fraudulent use of child care assistance, better assure accurate payments for child care, limit the need for monthly tracking, and still make it possible for parents to receive child care assistance while they search for work for a reasonable length of time**.

**FEE SUMMARY:** There is no fee or charge being imposed or increased in this docket.

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

**It is estimated that this rule change will result in the following savings of Idaho Child Care Program (ICCP) funds**:
**One year - $368,600**
**Five years - $1,843,000**
(**NOTE: These are 100% federal funds**.)

**NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done based on recommendations from the Child Care Advisory Panel comprised of community representatives including: child care providers, the Department of Education, Micron, Idaho Tribes, Head Start, the Governor's office, the Idaho Infant and Toddler Council, District Health Departments, and Idaho School Districts**.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5815.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 28, 2005.

DATED this 3rd day of August, 2005.

**THE FOLLOWING IS THE TEXT OF THE PENDING RULE**

**108. QUALIFYING ACTIVITIES FOR CHILD CARE.**
To be eligible for child care payments, a ~~*family*~~ parent must ~~*require*~~ need child care for one (1) of the following reasons ~~*listed in Subsections 108.01 through 108.04 of these rules.*~~: ~~*(5-3-03)*~~(  )

**01. Child Care Needed for Employment**. ~~*For the caretaker*~~ The parent must need child care to seek, accept, or maintain employment. ~~*Work search activities must be documented at least every thirty (30) days.*~~ ~~*(5-3-03)*~~(  )

**a.** An unemployed parent can use the search for work as the activity qualifying them for child care assistance for a total of no more than three (3) months during a calendar year. However, when work search activities are required by the Department, the parent is not subject to this three (3) month limit. (  )

**b.** For any of these three (3) months in which the parent claims to be looking for work, eighty (80) hours of work search will be counted as the qualifying activity for child care.These activity hours are used as a factor in determining the amount of child care assistance.The actual amount of payment is based on Section 305 of these rules. (  )

**c.** When work search is the qualifying activity, it can not be combined with any other qualifying activity listed under Section 108 of these rules. (  )

**02. Child Care Needed for Training or Education**. ~~*For the caretaker*~~ The parent must need child care to attend an education or training program. Persons with baccalaureate degrees or who are attending post-baccalaureate classes ~~*will*~~ do not qualify for child care assistance. Satisfactory progress in the program must be maintained in order to continue to

receive benefits. ~~*(7-1-99)*~~(____)

**03. Child Care Needed for Preventive Services**. The parent must need child care to access preventive services. Preventive services permit families to participate in treatment services designed to reduce or eliminate the need for ~~*protective intervention*~~ out-of-home placement of a child by the Department. The Department must ~~*Verification of*~~ verify the continued need for preventive services ~~*must be*~~ at least every three (3) months~~*, for the family to continue to be eligible for payment*~~. ~~*(5-3-03)*~~(____)

**04. Activities Negotiated Between the Department and ~~*Participant*~~ Parent**. ~~*For the caretaker*~~ The parent must need child care to complete Personal Responsibility Contract activities negotiated between the Department and the ~~*participant*~~ parent. ~~*(7-1-99)*~~(____)