

Dear Senators MARTIN, Riggs, Stennett, and  
Representatives WOOD, Vander Woude, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Department of Health and Welfare:

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-2201);

IDAPA 16.03.24 - The Medically Indigent Program (Chapter Repeal) - Proposed Rule (Docket  
No. 16-0324-2201);

IDAPA 16.03.25 - Idaho Medicaid Promoting Interoperability (PI) Program (Chapter Repeal) -  
Proposed Rule (Docket No. 16-0325-2201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 09/06/2022. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/03/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee  
**FROM:** Principal Legislative Drafting Attorney - Elizabeth Bowen  
**DATE:** August 18, 2022  
**SUBJECT:** Department of Health and Welfare

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-2201)

IDAPA 16.03.24 - The Medically Indigent Program (Chapter Repeal) - Proposed Rule (Docket No. 16-0324-2201)

IDAPA 16.03.25 - Idaho Medicaid Promoting Interoperability (PI) Program (Chapter Repeal) - Proposed Rule (Docket No. 16-0325-2201)

#### Summary and Stated Reasons for the Rule

Docket No. 16-0309-2201: This proposed rule updates requirements regarding the fitting of prosthetic and orthotic devices, in response to concerns raised during the 2022 legislative session.

Docket No. 16-0324-2201: This proposed rule repeals a chapter of rules regarding the medically indigent program, due to the repeal of such program by H.B. 735 (2022).

Docket No. 16-0325-2201: This proposed rule repeals a chapter of rules relating to the administration of a program that is being discontinued.

#### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted for any of these rules due to the nature of the rules. None of the rules is anticipated to have a negative fiscal impact on the state general fund.

#### Statutory Authority

These rules appear to be authorized pursuant to several sections of the Idaho Code.

cc: Department of Health and Welfare  
Frank Powell and Trinette Middlebrook

\*\*\* PLEASE NOTE \*\*\*

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

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

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

### **DOCKET NO. 16-0309-2201**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-264, 56-255, and 56-1610, 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, 2022.

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

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

The Department is proposing language that addresses stakeholder concerns brought up during the 2022 Legislature. This rulemaking replaces 16.03.09.772.01.c. with updated and corrected language regarding the requirements for fitting prosthetic and orthotic devices.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2)(b), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being made to comply with the actions of the Department's legislative committees and the agreement on content made with stakeholders.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Charles Beal, 208-364-1887.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5500 phone  
(208) 334-6558 fax  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov) e-mail

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-2201  
(Only Those Sections With Amendments Are Shown.)

772. PROSTHETIC AND ORTHOTIC SERVICES: COVERAGE AND LIMITATIONS.

**01. Program Requirements.** The following program requirements will be applicable for all prosthetic and orthotic devices or services purchased by the Department: (3-17-22)

**a.** A temporary lower limb prosthesis will be purchased when documented by the attending physician or non-physician practitioner that it is in the best interest of the participant's rehabilitation to have a temporary lower limb prosthesis prior to a permanent limb prosthesis. A new permanent limb prosthesis will only be requested after the residual limb size is considered stable; (3-17-22)

**b.** A request for a replacement prosthesis or orthotic device must be justified to be the least costly alternative as opposed to repairing or modifying the current prosthesis or orthotic device; (3-17-22)

**c.** All prosthetic and orthotic devices that require fitting must be provided by a Podiatrist, or an individual who is certified or registered by the American Board for Certification in Orthotics, Prosthetics & Pedorthics (ABC) or the Board of Certification/Accreditation (BOC); ( )

**ed.** All prosthetic and orthotic devices that require fitting must be provided by a Podiatrist, or an individual who is certified or registered by the American Board for Certification in Orthotics, Prosthetics & Pedorthics (ABC) or the Board of Certification/Accreditation (BOC). (3-17-22)T

**de.** All equipment that is purchased must be new at the time of purchase. Modification to existing prosthetic or orthotic equipment, or both, will be covered by the Department; (3-17-22)

**ef.** Prosthetic limbs purchased by the Department must be guaranteed to fit properly for three (3) months from the date of service; therefore, any modifications, adjustments, or replacements within the three (3) months are the responsibility of the provider that supplied the item at no additional cost to the Department or the participant; and (3-17-22)

**fg.** Not more than ninety (90) days may elapse between the time of the order and the preauthorization request is presented to the Department for consideration. (3-17-22)

**02. Program Limitations.** The following limitations apply to all prosthetic and orthotic services and equipment: (3-17-22)

**a.** No replacement will be allowed for prosthetic or orthotic devices within sixty (60) months of the date of purchase except in cases where there is clear documentation that there has been major physical change to the residual limb, and ordered by the attending physician or non-physician practitioner; (3-17-22)

**b.** Refitting, repairs, or additional parts must be limited to once per calendar year for all prosthetics or orthotics, or both, unless it has been documented that a major medical change has occurred to the limb, and ordered by the attending physician; (3-17-22)

**c.** All refitting, repairs or alterations require preauthorization based on medical justification by the participant's attending physician; (3-17-22)

**d.** Prosthetic and orthotic devices provided for cosmetic or convenience purposes are not covered by the Department. (3-17-22)

**e.** Electronically powered or enhanced prosthetic devices are not covered; (3-17-22)

**f.** The Department will only authorize corrective shoes or modification to an existing shoe owned by the participant when they are attached to an orthosis or prosthesis or when specially constructed to provide for a totally or partially missing foot; (3-17-22)

**g.** Shoes and accessories such as mismatch shoes, comfort shoes following surgery, shoes to support an overweight individual, or shoes used as bandage following foot surgery, arch supports, foot pads, metatarsal head appliances or foot supports are not covered; and (3-17-22)

**h.** Corsets are not a benefit nor are canvas braces with plastic or metal bones. However, special braces enabling a participant to ambulate will be covered when the attending physician documents that the only other method of treatment for this condition would be application of a cast. (3-17-22)

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

### **16.03.24 – THE MEDICALLY INDIGENT PROGRAM**

#### **DOCKET NO. 16-0324-2201 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING – 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 56-203, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

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

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

This chapter of rule is no longer in effect due to the passage of H0735 by the 2022 legislature and is now being repealed in its entirety.

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

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

This rulemaking has no fiscal impact to the state general fund, or any other funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible as this rulemaking is being done solely to comply with H0735 (2022).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kristin Mathews at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5500 phone; (208) 334-6558 fax  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov) e-mail

**IDAPA 16.03.24 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

### 16.03.25 – IDAHO MEDICAID PROMOTING INTEROPERABILITY (PI) PROGRAM

#### DOCKET NO. 16-0325-2201 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, and 56-1054, 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, 2022.

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

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

These rules have existed to: (a) establish the Idaho Medicaid Promoting Interoperability (PI) Program covered under 42 CFR Part 495; (b) provide the Medicaid PI Program criteria for participation of qualified eligible professionals and hospitals that adopt, implement, or upgrade to become meaningful users of certified electronic health record (EHR) systems in accordance with the American Recovery and Reinvestment Act of 2009 (ARRA), Section 4201; and (c) provide for the audit of providers receiving incentive payments. The Department uses this chapter to administer the federal PI Program that pays incentive payments to eligible providers and eligible hospitals that adopt certified EHR technology in accordance with the federal requirements.

The relevant federal funding for provider payments under this program closes at the end of FFY 2022, and federal funding for related audits and appeals closes at the end of FFY 2023. The state anticipates these audits and appeals will be completed by the end of SFY2022. After that, the entire rule chapter will not be needed.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: This rulemaking is not anticipated to have any fiscal impact on the State Fund, General Fund, or any other known funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the relevant federal funding will no longer be available. The state anticipates these audits and appeals will be completed by the end of SFY2022. After that, the entire rule chapter will not be needed.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Aaron Howard, 208-287-1141.

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, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720

Boise, ID 83720-0036  
phone: (208) 334-5500  
fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**IDAPA 16.03.25 IS BEING REPEALED IN ITS ENTIRETY**