

Dear Senators HEIDER, Souza, Jordan, and
Representatives WOOD, Packer, Chew:

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

IDAPA 16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD) -
Proposed Rule (Docket No. 16-0305-1701);

IDAPA 16.03.08 - Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program
- Proposed Rule (Docket No. 16-0308-1701);

IDAPA 16.05.07 - The Investigation and Enforcement of Fraud, Abuse, and Misconduct - Proposed
Rule (Docket No. 16-0507-1701);

IDAPA 16.06.12 - Rules Governing the Idaho Child Care Program (ICCP) - Proposed Rule (Docket
No. 16-0612-1701).

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 11/09/2017. 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 12/11/2017.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
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: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: October 23, 2017

SUBJECT: Department of Health and Welfare

IDAPA 16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD) - Proposed Rule (Docket No. 16-0305-1701)

IDAPA 16.03.08 - Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program - Proposed Rule (Docket No. 16-0308-1701)

IDAPA 16.05.07 - The Investigation and Enforcement of Fraud, Abuse, and Misconduct - Proposed Rule (Docket No. 16-0507-1701)

IDAPA 16.06.12 - Rules Governing the Idaho Child Care Program (ICCP) - Proposed Rule (Docket No. 16-0612-1701)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.03.05, 16.03.08, 16.05.07, and 16.06.12.

16.03.05

This rule, regarding aid to the aged, blind, and disabled:

- Increases the personal needs allowance and personal needs supplement for beneficiaries living in nursing homes;
- Provides clarification for when recipients of Social Security Retirement, Survivors, and Disability Insurance (RSDI) are eligible for Medicaid;
- Provides clarification on eligibility for the cash assistance program; and
- Aligns provisions on asset transfers and annuities with federal regulations.

Negotiated rulemaking was conducted, except on provisions that were changed to conform with federal regulations. The anticipated negative fiscal impact on the state general fund for fiscal year 2019 is \$174,800. The Department states that this rulemaking is authorized pursuant to Section 56-202, Idaho Code, which authorizes rulemaking for public assistance programs.

16.03.08

This rule, regarding temporary assistance for families in Idaho, clarifies that children receiving supplemental security income (SSI) shall not be considered part of the household when determining eligibility and

excludes the child's SSI income from household income. Additionally, the rule removes language providing that children under the age of 19 are eligible if attending school full-time.

Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund. The Department states that this rulemaking is authorized pursuant to Section 56-202, Idaho Code, which authorizes rulemaking for public assistance programs.

16.05.07

This rule provides that the Department may withhold public assistance payments from a Medicaid provider when suspending payments, without first notifying the provider, but the Department must send written notice to the provider within five days. Other public assistance providers will be notified prior to payment suspensions. The rule also revises the definition of "ownership or control interest."

Negotiated rulemaking was not conducted, as the purpose of the rule change is to align the language of the rule with federal regulations and other state rules. There is no anticipated negative fiscal impact on the state general fund. The Department states that this rulemaking is authorized pursuant to several sections of the Idaho Code, including Section 56-202, which authorizes rulemaking for public assistance programs.

16.06.12

This rule, regarding the Idaho Child Care Program, updates existing rule to clarify provisions and to align the rule with federal regulations. Changes include: (1) new health and safety requirements for infants; (2) clarification of eligibility provisions; and (3) updated terms and references.

Negotiated rulemaking was not conducted due to the nature of the rule change; however, the program held open forums around the state with providers to inform them of the new requirements. There is no anticipated negative fiscal impact on the state general fund. The Department states that this rulemaking is authorized pursuant to Section 56-202, Idaho Code, which authorizes rulemaking for public assistance programs.

cc: Department of Health and Welfare
Beverly Barr and Frank Powell

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

DOCKET NO. 16-0305-1701

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 Section 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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

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

The Department is amending this chapter of rules for the following updates:

1. The Cash Assistance program is being clarified for the AABD population who receive Social Security Income (SSI) as the only eligible participants.
2. The asset transfers and annuities are being aligned with federal regulations and guidance.
3. Personal Needs Allowance and Personal Needs Supplement amount is being increased for individuals living in a nursing home facilities.
4. The Basic Needs Allowance calculation explanation for RALFs and CFHs is being amended.

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

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

The fiscal impact for SFY 2019 increase for the Personal Needs Allowance (PNA) for Medicaid participants is estimated to be a total impact of \$486,600 of which \$347,600 is federal funds (71.433%), and \$139,000 is state general funds (28.567%). Additionally, the Personal Needs Supplement for individuals receiving SSI income below \$55 PNA is estimated to be \$35,800 that is from state general funds. Other changes being made to these rules are cost-neutral and will have no fiscal impact to state or federal funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted for the Personal Needs Allowance (PNA) for Medicaid participants living in nursing homes. The Notice of Negotiated Rulemaking published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, page 54](#). The Department determined it was not feasible to negotiate rule changes that align with federal regulations and are not negotiable.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Camille Schiller 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 25, 2017.

DATED this 1st day of September, 2017.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-1701
(Only Those Sections With Amendments Are Shown.)

051. EFFECTIVE DATE.

The effective date for aid is the first day of the month of application. Medicaid eligibility begins as described in Subsections 051.01 through 051.04. (7-1-99)

01. AABD Cash ~~and Participant Required to Apply for SSI.~~ *When the participant is required to apply for SSI as a condition of AABD cash, the effective date of the AABD cash is the first month the participant gets an SSI payment. If the participant is not eligible for SSI but is eligible for AABD cash,* aid is effective on the application date. (7-1-99)()

02. Normal Medicaid Eligibility. Medicaid coverage begins on the first day of the application month. (7-1-99)

03. Retroactive (Backdated) Medicaid Eligibility. Medicaid benefits must be backdated to the first day of the calendar month, for each of the three (3) months before the month of application, if the participant was Medicaid eligible during that month. If the participant is not eligible for Medicaid when he applies, retroactive eligibility is evaluated. (7-1-99)

04. Ineligible Non-Citizen Medicaid. Ineligible legal or illegal non-citizen coverage is restricted to emergency services. Coverage begins when the emergency treatment is required. Coverage ends with the last day emergency treatment is required. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

279. RETIREMENT FUNDS.

Retirement funds are ~~annuities or~~ work-related plans for providing income or pensions when employment ends. A retirement fund, owned by a participant, is a resource if he has the option of withdrawing a lump sum, even though he is not yet eligible for periodic retirement payments. If the participant is eligible for periodic retirement payments, the fund is not a countable resource. The value of a retirement fund is the amount of money a participant can currently withdraw from the fund. (7-1-99)()

(BREAK IN CONTINUITY OF SECTIONS)

513. RESIDENTIAL CARE OR ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.

A participant living in a Residential Care or Assisted Living Facility (RALF), in accordance with IDAPA 16.03.22,

“Residential Care or Assisted Living Facilities in Idaho,” or a Certified Family Home (CFH), in accordance with IDAPA 16.03.19, “Rules Governing Certified Family Homes,” is budgeted a basic allowance of ~~seventy-seven~~ ~~ninety-six~~ dollars (\$~~7796~~) monthly. Beginning July 1, 2013, this basic allowance will be adjusted annually by the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded to the nearest dollar.

(7-1-13)()

01. Budgeted Monthly Allowance Based On Level of Care. A participant is budgeted a monthly allowance for care based on the level of care received as described in Section 515 of these rules. If the participant does not require State Plan Personal Care Services (PCS), his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (4-7-11)

02. Care Levels and Monthly Allowances. Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 of these rules. Beginning July 1, 2013, the RALF and CFH allowances for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded to the next dollar.

| TABLE 513.02 - STATE PLAN PCS CARE LEVELS AND ALLOWANCES AS OF 1-1-06 | | |
|---|---------------|---|
| | Level of Care | Monthly Allowance |
| a. | Level I | Eight hundred and thirty-five dollars (\$835) |
| b. | Level II | Nine hundred and two dollars (\$902) |
| c. | Level III | Nine hundred and sixty-nine dollars (\$969) |

(7-1-13)

03. CFH Operated by Relative. A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH State Plan PCS allowances. He may receive the allowance for a person living with a relative as described in Section 501 of these rules. A relative for this purpose is the participant’s parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption.

(BREAK IN CONTINUITY OF SECTIONS)

723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.

For a participant with no community spouse, patient liability is computed as described in Subsections 723.01 through 723.03 of this rule. (5-3-03)

01. Income of Participants in Long-Term Care. For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is his total income less the deductions in Subsection 723.03 of this rule. (5-3-03)

02. Community Property Income of Long-Term Care Participant with Long-Term Care Spouse. Patient liability income for a participant, whose spouse is also in long-term care, choosing the community property method, is one-half (1/2) his share of the couple’s community income, plus his own separate income. The deductions in Table 723.03 are subtracted from his income. (7-1-99)

03. Income of Participant in Facility. A participant residing in the long-term care facility at least one (1) full calendar month, beginning with his most recent admission, must have the deductions in Subsection 723.03 subtracted from his income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. (3-15-02)

- a. AABD Income Exclusions. Subtract income excluded in determining eligibility for AABD cash. (7-1-99)
- b. Aid and Attendance and UME Allowances. Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. (3-30-01)
- c. SSI Payment Two (2) Months. Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. (7-1-99)
- d. AABD Payment. Subtract the AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care. (7-1-99)
- e. First Ninety (\$90) Dollars of VA Pension. Subtract the first ninety (\$90) dollars of a VA pension for a veteran in a private long-term care facility or a State Veterans Nursing Home. (5-3-03)
- f. Personal Needs. Subtract ~~forty~~ fifty-five dollars (~~\$40~~55) for the participant's personal needs. For a veteran or surviving spouse in a private long-term care facility or a State Veterans Nursing Home the first ninety (\$90) dollars of VA pension substitutes for the ~~forty~~ fifty-five dollar (~~\$40~~55) personal needs deduction. (~~5-3-03~~)()
- g. Employed and Sheltered Workshop Activity Personal Needs. For an employed participant or participant engaged in sheltered workshop or work activity center activities, subtract the lower of the personal needs deduction of two hundred dollars (\$200) or his gross earned income. The participant's total personal needs allowance must not exceed two hundred and thirty dollars (\$230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars (\$200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-30-01)
- h. Home Maintenance. Subtract two hundred and twelve dollars (\$212) for home maintenance cost if the participant had an independent living situation, before his admission for long-term care. His physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (7-1-99)
- i. Maintenance Need. Subtract a maintenance need deduction for a family member, living in the long-term care participant's home. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16, 1996. (7-1-99)
- j. Medicare and Health Insurance Premiums. Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be subtracted, if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed. (7-1-99)
- k. Mandatory Income Taxes. Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income. (7-1-99)
- l. Guardian Fees. Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee is the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (3-20-14)
- m. Trust Fees. Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering

the participant's trust. (7-1-99)

n. Impairment Related Work Expenses. Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services that are purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (3-20-14)

o. Income Garnished for Child Support. Subtract income garnished for child support to the extent the expense is not already accounted for in computing the maintenance need standard. (3-30-01)

p. Incurred Medical Expenses. Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount. (4-11-15)

q. Pre-existing Medical Expenses. Subtract amounts for medical and remedial care expenses incurred within the three (3) months prior to the month of application. The deductions for medical and remedial care expenses are limited to those medically necessary expenses incurred by the participant for the participant's care. The deduction for medical and remedial care expenses is limited to the amount of liability owed by the participant, and if applicable, after any third-party insurance has been applied. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

725. PATIENT LIABILITY FOR PARTICIPANT WITH COMMUNITY SPOUSE.
 After income ownership is decided, patient liability is determined using steps in Table 725.

| TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY | | |
|--|--|--|
| Step | Procedure | |
| 01. | AABD Income Exclusions | Subtract income excluded in determining eligibility for AABD cash. |
| 02. | Aid and Attendance and UME Allowances | Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. |
| 03. | SSI Payment Two (2) Months | Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. |
| 04. | AABD Cash | Subtract the AABD cash payment and income used to compute AABD cash, for a participant eligible to have his AABD cash continued up to three (3) months, while he is in long-term care. |
| 05. | VA Pension | Subtract the first ninety (90\$) of the VA pension for a veteran. |
| 06. | Personal Needs | Subtract forty fifty-five dollars (\$40 55) for the participant's personal needs. Do not allow this deduction for a veteran. |
| 07. | Employed and Sheltered Workshop Activity Needs | For an employed participant or participant engaged in sheltered workshop or work activity center activities subtract the lower of two hundred dollars (\$200) or his earned income. |

| TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY | |
|--|--|
| Step | Procedure |
| <p>08. Community Spouse Allowance: Step a.</p> | <p>Compute the Community Spouse Allowance (CSA) using Step a. through Step c.</p> <p>Compute the Shelter Adjustment. Add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs.</p> <p>Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative.</p> <p>Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the Federal Office of Management and Budget (OMB) for a family of two (2) persons.</p> <p>The Shelter Adjustment is the positive balance remaining.</p> |
| <p>09. Community Spouse Allowance: Step b.</p> | <p>Compute the Community Spouse Need Standard (CSNS). Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars (\$1,500) by the percentage increase in the consumer price index for all urban Consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January.</p> |
| <p>10. Community Spouse Allowance: Step c.</p> | <p>Compute the Community Spouse Allowance. Subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by his resources. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum.</p> <p>A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit.</p> |

| TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY | |
|--|--|
| Step | Procedure |
| 11. | <p>Compute the family member's gross income. Subtract the family member's gross income from the minimum CSNS. Divide the difference by three (3). Round cents to the next higher dollar.</p> <p>Family Member Allowance (FMA)</p> <p>Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the participant.</p> <p>A family member is, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home.</p> |
| 12. | <p>Medicare and Health Insurance Premiums</p> <p>Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Do not subtract the Medicare Part B premiums if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed.</p> |
| 13. | <p>Mandatory Income Taxes</p> <p>Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income.</p> |
| 14. | <p>Guardian Fees</p> <p>Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly.</p> |
| 15. | <p>Trust Fees</p> <p>Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust.</p> |
| 16. | <p>Impairment Related Work Expenses</p> <p>Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged.</p> |
| 17. | <p>Income Garnisheed for Child Support</p> <p>Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the Family Member Allowance.</p> |
| 18. | <p>Incurred Medical Expenses</p> <p>Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount.</p> |

| TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY | |
|---|---|
| Step | Procedure |
| 19. Pre-existing Medical Expenses | Subtract amounts for medical and remedial care expenses incurred within the three (3) months prior to the month of application. The deductions for medical and remedial care expenses are limited to those medically necessary expenses incurred by the participant for the participant's care. The deduction for medical and remedial care expenses is limited to the amount of liability owed by the participant, and if applicable, after any third-party insurance has been applied. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero. |

(3-25-16)()

726. PERSONAL NEEDS SUPPLEMENT (PNS).

A nursing home participant may receive a PNS to bring his gross income up to ~~forty~~ fifty-five dollars (\$~~40~~55). Gross income is income after exclusions and before disregards. Gross income includes money withheld to recover an AABD overpayment. The PNS is the difference between the participant's gross income and ~~forty~~ fifty-five dollars (\$~~40~~55). If not in an even dollar amount, the PNS is rounded up to the next dollar. The participant's income including the PNS must not exceed ~~forty~~ fifty-five dollars (\$~~40~~55).

(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

781. RSDI RECIPIENT ENTITLED TO COLA DISREGARD.

A participant receiving RSDI is eligible for Medicaid if he became and remains ineligible for SSI payments as of April 2011, or for AABD cash or SSI payments ~~after April, from May~~ 1977 through March 2011. The participant must still be entitled to AABD cash or SSI, except for a cost-of-living adjustment (COLA) in RSDI benefits. All RSDI COLAs received by the participant, and any person whose income and resources are counted in determining the participant's eligibility, are disregarded for Medicaid.

(7-1-99)()

(BREAK IN CONTINUITY OF SECTIONS)

841. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.

A participant is not subject to the asset transfer penalty for taking any action described in Subsections 841.01 through 841.14 of this rule. (4-2-08)

01. Home to Spouse. The asset transferred was a home. Title to the home was transferred to the spouse. (7-1-99)

02. Home to Minor Child or Disabled Adult Child. The asset transferred was a home. Title to the home was transferred to the child of the participant or spouse. The child must be under age twenty-one (21) or blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. (7-1-99)

03. Home to Brother or Sister. The asset transferred was a home. Title to the home was transferred to a brother or sister of the participant or spouse. The brother or sister must have an equity interest in the transferred home. The brother or sister must reside in that home for at least one (1) year immediately before the month the participant starts long-term care. (7-1-99)

04. Home to Adult Child. The asset transferred was a home. Title to the home was transferred to a son or daughter of the participant or spouse, other than a child under the age of twenty-one (21). The son or daughter must reside in that home for at least two (2) years immediately before the month the participant started long-term care. The

adult child must prove he provided nursing facility level medical care to the participant which permitted him to live at home rather than enter long-term care. The son or daughter must not have received payment from Medicaid for home and community based services provided to the participant. (4-2-08)

05. Benefit of Spouse. The assets were transferred to the participant's spouse or to another person for the sole benefit of the spouse. (7-1-99)

06. Transfer From Spouse. The assets were transferred from the participant's spouse to another person for the sole benefit of the participant's spouse. (7-1-99)

07. Transfer to Child. The assets were transferred to the participant's child, or to a trust established solely for the benefit of the participant's child. The child must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. The child may be any age. (7-1-99)

08. Intent to Get Fair Market Value. The participant or spouse proves he intended to dispose of the assets at fair market value or for other adequate consideration. (7-1-99)

09. Assets Returned. All assets transferred for less than fair market value have been returned to the participant. (7-1-99)

10. Medicaid Qualification Not the Intent. The participant or spouse proves the assets were transferred exclusively for a purpose other than to qualify for Medicaid or to avoid recovery. (3-20-04)

11. Undue Hardship. The participant, his representative, or the facility in which he resides may request the hardship waiver. The hardship waiver must be requested in writing within ten (10) days of the date of the asset transfer penalty notice. Undue hardship exists if any of the conditions in Subsections 841.11.a. through 841.11.d. of this rule apply. (4-2-08)

a. The participant proves he is not able to pay for his nursing facility services or his wavier services by any means. (3-30-07)

b. The participant proves that he has made reasonable efforts, consistent with his physical and financial ability, to recover the transferred asset. The participant must fully cooperate with the state of Idaho in efforts to recover the transferred asset and, upon request, must assign his rights to recover the asset to the State of Idaho. (3-30-07)

c. The participant proves he did not knowingly transfer the asset. (3-30-07)

d. The participant proves he would be deprived of food, clothing, shelter or other necessities of life if the asset transfer penalty is imposed and he assigns his rights to recover the asset to the State of Idaho. (3-30-07)

12. Exception to Fair Market Value. The amount received is adequate, even if not fair market value. This exception must meet one (1) of the conditions in Subsections 841.12.a. through 841.12.c. of this rule. (4-2-08)

a. A forced sale was done under reasonable circumstances. (7-1-99)

b. Little or no market demand exists for the type of asset transferred and the lack of market demand was not created by a voluntary act of the participant to qualify for assistance or to avoid recovery. (4-2-08)

c. The asset was transferred to settle a legal debt approximately equal to the fair market value of the transferred asset. (7-1-99)

13. No Benefit to Participant. The participant received no benefit from the asset. This exception must meet one (1) of the conditions in Subsections 841.13.a. and 841.13.b. of this rule. (4-2-08)

a. The participant or spouse held title to the property only as a trustee for another person. The participant or spouse had no beneficial interest in the property. (7-1-99)

b. The transfer was done to clear title to property. The participant or spouse had no beneficial interest in the property. The defect in the title was not created in an attempt to transfer assets to qualify for assistance or avoid recovery. (3-30-07)

14. Fraud Victim. The asset was transferred because the participant or spouse was the victim of fraud, misrepresentation, or coercion. The participant or spouse must take all possible steps to recover the assets or property, or its equivalent in damages and must assign recovery rights to the state of Idaho. (3-20-04)

15. Transfer to Trust of Disabled Person. The assets were transferred to a trust established solely for the benefit of an individual under sixty-five (65) years of age who is disabled. ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-1701

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 Section 56-202, Idaho Code, and 45 CFR Parts 260-265.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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

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

The Department is amending these rules relating to:

1. Children receiving Supplemental Security Income (SSI) income when their families apply for and receive TAFI benefits; and
2. A child's eligibility when the child turns eighteen (18) years old.

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

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

1. The fiscal impact for a child who receives Supplemental Security Income (SSI), is anticipated to be cost-neutral.
2. The fiscal impact related to the change being made in regards to the eligibility of a TAFI household with a child turning eighteen (18) is estimated to be between \$2,000 and \$6,000 in cost savings. The state general fund portion would be \$650 and \$1,950, and the federal funds portion would be \$1,350 and \$4,050.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, page 55](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ericka Rupp at (208) 334-5641.

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 25, 2017.

DATED this 1st day of September, 2017.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0308-1701
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

- 01. Agency Error.** A benefit error caused by the Department's action or failure to act. (7-1-12)
- 02. Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- 03. Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
- 04. Caretaker Relative.** An adult who is a specified relative, other than parents, who has an eligible related child residing with them and who is responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt/great aunt, uncle/great uncle, grandparent/great grandparent, nephew, niece, cousin, any one (1) of these relationships by half-blood, a step-sibling, or a spouse of a relative by marriage, even if the marriage has ended. (3-29-17)
- 05. Claim Determination.** The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. (7-1-12)
- 06. Department.** The Idaho Department of Health and Welfare. (7-1-98)
- 07. Dependent Child.** A child under the age of eighteen (18), ~~or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training.~~ (3-30-01) ()
- 08. Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- 09. Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
- 10. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 11. Household.** A unit of eligible individuals that includes parents, or may include caretaker relatives who have an eligible child residing with them. (3-29-17)

12. **Inadvertent Household Error (IHE).** A benefit error caused unintentionally by the household. (7-1-12)
13. **Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)
14. **Parent.** The mother/step-mother or father/step-father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (3-29-17)
15. **Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
16. **Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
17. **Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)
18. **Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)
19. **Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

125. MANDATORY TAFI HOUSEHOLD MEMBERS.

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

01. **Children.** Children under the age of eighteen (18) ~~or, under the age of nineteen (19) if they are attending a secondary school full time.~~ Children must reside with a parent or caretaker relative who exercises care and control of them. A dependent child's brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. Children receiving Supplemental Security Income (SSI) are excluded from the household ~~(3-29-17)()~~
02. **Parents.** Parents, as defined in Section 010 of these rules, who have an eligible child residing with them. (3-29-17)
03. **Pregnant Woman.** A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)
04. **Spouses.** Anyone related by marriage to another mandatory household member. (7-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.

The types of income listed in Subsections 215.01 through 215.3840 of this rule, are excluded. ~~(4-7-11)()~~

01. **Supportive Services.** Supportive services payments. (7-1-98)
02. **Work Reimbursements.** Work-related reimbursements. (7-1-98)

- 03.** **Child's Earned Income.** Earned income of a dependent child, who is attending school. (7-1-98)
- 04.** **Child Support.** Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)
- 05.** **Child's Supplemental Security Income. A child's Supplemental Security Income (SSI).** ()
- 056.** **Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- 067.** **Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- 078.** **Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)
- 089.** **TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- 0910.** **Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)
- 101.** **Interest Income.** Interest posted to a bank account. (7-1-98)
- 172.** **Tax Refunds.** State and federal income tax refunds. (7-1-98)
- 123.** **EITC Payments.** EITC payments. (7-1-98)
- 134.** **Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
- 145.** **Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
- 156.** **Foster Care.** Foster care payments. (7-1-98)
- 167.** **Adoption Assistance.** Adoption assistance payments. (7-1-98)
- 178.** **Food Programs.** Commodities and food stamps. (7-1-98)
- 189.** **Child Nutrition.** Child nutrition benefits. (7-1-98)
- 1920.** **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
1981. **201.** **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
9101. **212.** **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
- 223.** **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- 234.** **Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- 245.** **Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
- 256.** **Native American Payments.** Payments authorized by law made to people of Native American

ancestry. (7-1-98)

267. Educational Income. Educational income includes deferred repayment education loans, grants, scholarships, fellowships, and veterans' educational benefits. The school attended must be a recognized institution of post secondary education, a school for the handicapped, a vocational education program, or a program providing completion of a secondary school diploma, or equivalent. (7-1-12)

278. Work Study Income of Student. College work study income. (7-1-98)

289. VA Educational Assistance. VA Educational Assistance. (7-1-98)

2930. Senior Volunteers. Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)

301. Relocation Assistance. Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)

312. Disaster Relief. Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)

323. Radiation Exposure Payments. Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)

334. Agent Orange. Agent Orange settlement payments. (7-1-98)

345. Spina Bifida. Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)

356. Japanese-American Restitution Payments. Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)

367. Vista Payments. Volunteers in Service to America (VISTA) payments. (3-30-01)

378. Subsidized Employment. Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)

389. Temporary Census Income. All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. (4-7-11)

3940. Income Excluded By Federal Law. Income excluded by federal law is not counted in determining income available to the participant. (7-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

240. INDIVIDUALS EXCLUDED FROM FAMILY SIZE.

Individuals listed in Subsections 240.01 through 240.056 are excluded from the family size in determining eligibility and grant amount. Income and resources of these ineligible family members are counted unless otherwise excluded in Section 215 of these rules. (7-1-99)()

01. Ineligible Non-Citizens. Individuals who are non-citizens and are not listed in Section 131. (7-1-98)

02. Drug Related Conviction. 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)

03. Fleeing Felons. Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony. (7-1-98)

04. Felons Violating a Condition of Probation or Parole. Felons who are violating a condition of probation or parole imposed for a federal or state felony. (7-1-98)

05. Fraudulent Misrepresentation of Residency. Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid or SSI from two (2) or more states at the same time are ineligible for ten (10) years from the date of conviction. (7-1-99)

06. Children Receiving Supplemental Security Income (SSI). A child who is receiving Supplemental Security Income (SSI). ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.07 – THE INVESTIGATION AND ENFORCEMENT OF FRAUD, ABUSE, AND MISCONDUCT

DOCKET NO. 16-0507-1701

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), 56-203(1) & (2), 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code, and 42 CFR 1002.214 and 1002.215.

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 18, 2017.

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 amendments to these rules are to align ownership or control interest with percentages and definitions with other existing state rules and federal definitions. Payment suspensions under federal regulations can be suspended without first notifying a Medicaid provider of the intention to do so under certain circumstances and these rules are being amended to allow the Department to do so. This ability was inadvertently removed from the rule when other public assistance providers were added to these rules in 2014. Medicaid providers will continue to receive notification of payment suspensions under federal requirements in 42 CFR455.23(b).

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

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

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change aligns with federal regulations and other Department rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lori Stiles at (208) 334-0653.

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 25, 2017.

DATED this 1st day of September, 2017.

Tamara Prisock
DHW - Administrative Rules Unit
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0507-1701
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS AND ABBREVIATIONS.

For purposes of this chapter of rules, the following terms apply. (3-20-14)

01. Abuse or Abusive. Provider practices that are inconsistent with sound fiscal, business, child care, or medical practices, and result in an unnecessary cost to a public assistance program, in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a medical assistance recipient. (3-20-14)

02. Access to Documentation and Records. To review and copy records at the time a written request is made during normal business hours. Documentation includes all materials as described in Section 101 of these rules. (3-30-07)

03. Claim. Any request or demand for payment, or document submitted to initiate payment, for items or services provided under a public assistance program, whether under a contract or otherwise. (3-20-14)

04. Conviction. An individual or entity is considered to have been convicted of a criminal offense: (3-30-07)

a. When a judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (3-30-07)

b. When there has been a finding of guilt against the individual or entity by a federal, state, or local court; (3-30-07)

c. When a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court; or (3-30-07)

d. When the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. (3-30-07)

05. Department. The Idaho Department of Health and Welfare, its authorized agent or designee. (3-30-07)

06. Exclusion. A specific person or provider will be precluded from directly or indirectly providing services and receiving reimbursement under Medicaid. (3-30-07)

07. Fraud or Fraudulent. An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. (3-30-07)

08. Knowingly, Known, or With Knowledge. A person, with respect to information or an action, who: (3-20-14)

a. Has actual knowledge of the information or an action; (3-20-14)

b. Acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or (3-20-14)

c. Acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (3-20-14)

- 09. Managing Employee.** A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency. (3-30-07)
- 10. Medicaid.** Idaho's Medical Assistance Program. (3-30-07)
- 11. Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-30-07)
- 12. Ownership or Control Interest.** A person or entity that: (3-20-14)
- a.** Has an ownership interest totaling ~~twenty~~-five percent (25%) or more in an entity; ~~(3-20-14)~~()
 - b.** Is an officer or director of an entity that is organized as a corporation; (3-20-14)
 - c.** Is a partner in an entity that is organized as a partnership; or (3-20-14)
 - d.** Is a managing member in an entity that is organized as a limited liability company. (3-20-14)
- 13. Participant.** An individual or recipient who is eligible and enrolled in any public assistance program. (3-20-14)
- 14. Person.** An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private. (3-30-07)
- 15. Program.** Any public assistance program, including the Medicaid program and Idaho's State Plan, or any parts thereof. (3-20-14)
- 16. Provider.** An individual, organization, agency, or other entity providing items or services under a public assistance program. (3-20-14)
- 17. Provider Agreement.** A written agreement between the Department and a provider or group of providers of supplies or services. This agreement contains any terms or conditions deemed appropriate by the Department. (3-30-07)
- 18. Public Assistance Program.** Assistance for which provision is made in any federal or state law existing, or hereafter enacted, by the state of Idaho or the congress of the United States by which payments are made from the federal government to the state in aid, or in respect to payment by the state for welfare purposes to any category of needy person, and any other program of assistance for which provision for federal or state funds for aid may from time to time be made. (3-20-14)
- 19. Recoup and Recoupment.** The collection of funds for the purpose of recovering overpayments made to providers for items or services the Department has determined should not have been paid. The recoupment may occur through the collection of future claims paid or other means. (3-30-07)
- 20. Sanction.** Any abatement or corrective action taken by the Department which is appealable under Section 003 of these rules. (3-30-07)
- 21. State Plan.** The contract between the state and federal government under 42 U.S.C. section 1396a(a). (3-30-07)
- 22. Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-30-07)
- 23. Title XXI.** Title XXI of the Social Security Act, known as the Children's Health Insurance Program

(CHIP). This is a program that primarily pays for medical assistance for low-income children. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

210. SUSPENSION OF PAYMENTS PENDING INVESTIGATION.

The Department may suspend public-assistance payments in whole or part in a suspected case of fraud or abuse pending investigation and conclusion of legal proceedings related to the provider's alleged fraud or abuse. When payments have been suspended under this section of rule, the Department will provide for a hearing within thirty (30) days of receipt of any timely filed notice of appeal. (3-20-14)

01. Basis for Suspension of Payments. When the Department through reliable evidence suspects fraud or abuse, or when a provider fails to provide immediate access to records, public-assistance payments may be withheld or suspended. (3-20-14)

02. Notice of Suspension of Payments. The Department may ~~not~~ withhold public-assistance payments without first notifying the provider of its intention to do so when the Department is suspending payments of a Medicaid provider. The Department will send written notice within five (5) days of taking such action in accordance with 42 CFR 455.23(b). All other public assistance providers will be notified prior to the suspension of payments. (3-20-14)()

03. Duration of Suspension of Payments. The withholding of payment actions under this section of rule will be temporary and will not continue after: (3-30-07)

a. The Department or the prosecuting authorities determine there is insufficient evidence of fraud or willful misrepresentation by the provider; or (3-30-07)

b. Legal proceedings related to the provider's alleged fraud or abuse are completed. (3-30-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.06.12 – RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)
DOCKET NO. 16-0612-1701
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 Section 56-202, Idaho Code, and CFR 45 Part 98.42.

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 18, 2017.

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

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

The Department is amending these rules to clarify and align with the Re-Authorization of Child Care and Development Block Grant federal regulations. The Department is implementing new health and safety requirements for child care providers around safe sleep for infants, streamlining and clarifying the processes for determining eligibility, and updating terms and references needed to meet federal and state requirements.

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

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

There is no anticipated fiscal impact to state general funds or to the federally-funded block grant for these proposed rule changes. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change aligns with federal regulations. The Idaho Child Care Program facilitated seven “open forums” with providers throughout the state. Information was shared with providers about rule additions for safe sleep practices that are needed to complete the federal requirements and received feedback from providers on the new health and safety trainings implemented this year.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ericka Rupp at (208) 334-5641.

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 25, 2017.

DATED this 1st day of September, 2017.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0612-1701
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH L.

The following definitions and abbreviations apply to this chapter: (4-2-08)

- 01. AABD.** Aid to the Aged, Blind, and Disabled. (4-2-08)
- 02. Abuse or Abusive.** Provider practices that are inconsistent with sound fiscal, business, or child care practices and result in an unnecessary cost to the Idaho Child Care Program, in reimbursement that is not necessary, or that fail to meet professional recognized standards for child care, or result in physical harm, pain, or mental anguish to children. (7-1-09)
- 03. Child.** Any person under age eighteen (18) who is under the care of a parent, relative, or ~~a person eighteen (18) years of age or older who is claimed on tax returns as a dependent~~ someone acting in loco parentis. (4-2-08)()
- 04. Child Care.** Care, control, supervision, or maintenance of a child provided for compensation by an individual, other than a parent, for less than twenty-four (24) hours in a day. (4-2-08)
- 05. Claim.** Any request or demand for payment, or document submitted to initiate payment, for items or services provided under the Idaho Child Care Program. (7-1-09)
- 06. Department.** The Idaho Department of Health and Welfare or its designee. (7-1-09)
- 07. Earned Income.** Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. (4-2-08)
- 08. Employment.** A job paying wages or salary at federal or state minimum wage, whichever is applicable, including work paid by commission or in-kind compensation. Full or part-time participation in a VISTA or AmeriCorps program is also employment. (4-2-08)
- 09. Foster Care.** The twenty-four (24) hour substitute care of children in the legal custody of the state of Idaho provided in a state licensed foster home by persons who may or may not be related to a child. Foster care is provided in lieu of parental care and is arranged through a private or public agency. (3-2-17)
- 10. Foster Child.** A child in the legal custody of the state of Idaho placed for twenty-four (24) hour substitute care by a private or public agency. (3-2-17)
- 11. Foster Home.** The private home of an individual or family licensed under the state of Idaho and providing twenty-four (24) hour substitute care to six (6) or fewer children. (3-2-17)
- 12. Fraud or Fraudulent.** An intentional deception or misrepresentation made by a person with knowledge that the deception could result in some unauthorized benefit to himself or some other person. (7-1-09)
- 13. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-99)
- 14. In Loco Parentis.** Acting “in loco parentis” means a person who acts in place of a parent, assuming care and custody of a child ~~by a formal or informal agreement with the child's parent~~ by legal guardianship. (4-2-08)()
- 15. Intentional Program Violation (IPV).** An intentional false or misleading action, omission, or

statement made in order to qualify as a provider or recipient in the Idaho Child Care program or to receive program benefits or reimbursement. (7-1-09)

16. Job Training and Education Program. A program designed to provide job training or education. Programs may include high school, junior college, community college, college or university, general equivalency diploma (GED), technical school, and vocational programs. To qualify as a Job Training and Education Program, the program must prepare the trainee for employment. (4-2-08)

17. Infant/Toddler. A child less than forty-eight (48) months of age. (3-2-17)

18. Incapacitated Parent. A parent who is determined by a licensed practitioner of the healing arts to be unfit, incapable, or significantly limited in his ability to provide adequate care for his child or ward. (3-2-17)

19. Knowingly, Known, or With Knowledge. With respect to information or an action about which a person has actual knowledge of the information or action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (7-1-09)

20. Legal Guardian. A court-appointed individual who acts as the primary caretaker of a child or minor. ()

201. Licensed Practitioner of the Healing Arts. A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. (4-2-08)

011. DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.

The following definitions and abbreviations apply to this chapter of rules: (4-2-08)

01. Managing Employee. A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an organization or entity. (7-1-09)

02. Minor Parent. A parent under the age of eighteen (18). (4-2-08)

03. Non-Recurring Lump Sum Income. Income received by a family in a single payment, not expected to be available to the family again. (7-1-99)

04. Parent. A person responsible for a child because of birth, adoption, ~~step-parent marriage~~, or legal guardianship, ~~foster care~~; or a person acting in loco parentis. (4-2-08)()

05. Preventive Services. Services needed to reduce or eliminate the need for protective intervention. Preventive services permit families to participate in activities designed to reduce or eliminate the need for out-of-home placement of a child by the Department. (4-2-08)

06. Prospective Income. Income a family expects to receive within a given time. This can be earned or unearned income. (7-1-99)

07. Provider. An individual, organization, agency, or other entity providing child care. (7-1-99)

08. Relative Provider. Grandparent, great-grandparent, aunt, uncle, or adult sibling by blood or current marriage who provides child care. (4-2-08)

09. SSI. Supplemental Security Income. (4-2-08)

10. Special Needs. Any child with physical, mental, emotional, behavioral disabilities, or developmental delays identified on an Individual Education Plan (IEP) or an Individualized Family Service Plan (IFSP). (4-2-08)

11. State Median Income (SMI). State Median Income Estimates in the Code of Federal Regulations are available on the U.S. Government Publishing Office website at <https://www.gpo.gov/fdsys>. (3-2-17)

12. TAFI. Temporary Assistance for Families in Idaho. (4-2-08)

13. Unearned Income. Unearned income includes retirement, interest child support, and any income received from a source other than employment or self-employment. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

070. INCOME LIMITS.

To be eligible for child care assistance, a family's countable income must meet the following guidelines using the published Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. (3-2-17)

01. Income at Application. At the time of application, a family's income must not exceed one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size. (3-2-17)

02. Income During Eligibility Period. During the eligibility period, when a family's countable income exceeds eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, the family becomes ineligible for child care assistance. (3-2-17)

03. Income at Time of Redetermination. At the time of redetermination, if a family's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size, ~~but does not exceed eighty five percent (85%) of the State Median Income (SMI) for a family of the same size,~~ the family may ~~be eligible to~~ receive a graduated phase out of child care assistance. (3-2-17)()

071. COUNTABLE INCOME.

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section 072 of these rules. (5-1-11)

072. EXCLUDED INCOME.

The following sources of income are not counted as family income. (4-2-08)

01. Earned Income of a Dependent Child. Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

02. Income Received for Person Not Residing With the Family. Income received on behalf of a person who is not living in the home. (4-2-08)

03. Educational Funds. All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

04. Assistance. Assistance to meet a specific need from other organizations and agencies. (4-2-08)

05. Lump Sum Income. Non-recurring ~~or~~ lump sum income is excluded ~~as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months.~~ (4-2-08)()

06. Loans. A loan is money received that is to be repaid. (3-2-17)

07. TAFI and AABD Benefits. (4-4-13)

- 08. Foster Care Payments.** (4-4-13)
- 09. AmeriCorps/VISTA Volunteers.** Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)
- 10. Income Tax Refunds and Earned Income Tax Credits.** Income tax refunds and earned income tax credits are excluded as income. (4-2-08)
- 11. Travel Reimbursements.** Reimbursements from employers for work-related travel. (4-2-08)
- 12. Tribal Income.** Income received from a tribe for any purpose other than direct wages. (4-2-08)
- 13. Foster Parents' Income.** Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)
- 14. Adoption Assistance.** Adoption assistance payments are excluded from income. (4-2-08)
- 15. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten-year U.S. Census. (4-7-11)
- 16. Office of Refugee Resettlement Assistance.** (4-4-13)
- 17. Workforce Investment Act (WIA) Benefits or Workforce Innovation and Opportunity Act (WIOA) Benefits.** (3-2-17)

(BREAK IN CONTINUITY OF SECTIONS)

077. CONVERTING INCOME TO A MONTHLY AMOUNT.

If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: (5-1-11)

- 01. Weekly Amount.** Multiply weekly amounts by four point three (4.3). (5-1-11)
- 02. Bi-Weekly Amount.** Multiply bi-weekly amounts by two point one five (2.15). (5-1-11)
- 03. Semi-Monthly Amount.** Multiply semi-monthly amounts by two (2). (5-1-11)
- 04. ~~Salary~~ Monthly Amount.** Use the exact monthly income if it is expected for each month of the certification period. (~~5-1-11~~)()

(BREAK IN CONTINUITY OF SECTIONS)

103. COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.

~~If a minor child has a non-custodial parent, the biological~~ A natural or adoptive parent, or other individual who lives with ~~the child~~ and exercises parental control over a minor child who has an absent parent, must cooperate in establishing paternity for the child and obtaining child support. (~~3-26-08~~)()

- 01. Providing All Information.** "Cooperation" includes providing all information to identify and locate the non-custodial parent. ~~At a minimum, the first and last name of the non-custodial parent and at least two (2) of the following pieces of information must be provided,~~ unless good cause for non-cooperation exists. (~~3-26-08~~)()

- ~~a. Birth date; (3-26-08)~~
- ~~b. Social Security Number; (3-26-08)~~
- ~~c. Current address; (3-26-08)~~
- ~~d. Current phone number; (3-26-08)~~
- ~~e. Current employer; (3-26-08)~~
- ~~f. Make, model, and license number of any motor vehicle owned by the non-custodial parent; and (3-26-08)~~
- ~~g. Name, phone numbers and addresses of the parents of the non-custodial parent. (3-26-08)~~

02. Established Case for Custodial Parent. After Child Support Services (CSS) has established a case for a custodial parent, all child support payments must be sent directly to CSS. If the custodial parent receives child support directly from the non-custodial parent, the custodial parent must forward the payment to CSS for receipting. (3-26-08)

03. Failure to Cooperate. (3-26-08)

a. Failure to cooperate includes failure to complete the non-custodial or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by Child Support Services (CSS). (3-2-17)

b. When a parent or individual fails to cooperate in establishing paternity and obtaining support, the family is not eligible to participate in the Idaho Child Care Program. (3-26-08)

04. Exemptions From Cooperation Requirement. The parent or individual will not be required to provide information about the non-custodial or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be provided. (3-26-08)

a. Good cause for failure to cooperate in obtaining support is: (3-26-08)

i. Proof the child was conceived as a result of incest or forcible rape; (3-26-08)

ii. Proof the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source; and (3-26-08)

iii. Substantial and credible proof is provided indicating the custodial parent cannot provide the minimum information regarding the non-custodial parent. (3-26-08)

b. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. (3-26-08)

c. The cooperation requirement will be waived if good cause exists. No further action will be taken to establish paternity or obtain support. If good cause does not exist the parent will be notified that he is not eligible to receive Idaho Child Care program benefits, until child support cooperation as been obtained. (3-26-08)

104. FAMILY COMPOSITION.

A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition:

(4-2-08)

01. Married Parents. Married parents living together in a common residence, includes biological, adoptive, step-parent, guardian, and foster parent. ~~(5-1-11)~~()

02. Unmarried Parents. Unmarried parents who live in the same home and who have a child in common living with them. (4-2-08)

03. Dependents. Individuals who are ~~claimed as~~ dependents of a parent, guardian, or caretaker relative and living in the home at the primary residence. ~~(3-2-17)~~()

04. Minor Parent. A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. (4-2-08)

05. Individual Acting In Loco Parentis. An individual acting in loco parentis who is eligible to apply for child care benefits, and the child's natural or adoptive parents are not living in the home. (3-2-17)

06. Citizenship or Alien Status Requirement. Family members who are not citizens or living lawfully in the United States will not be counted in the family size. The income of those non-counted family members will be counted when determining the household's income according to Sections 070 through 099 of these rules.

(BREAK IN CONTINUITY OF SECTIONS)

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, each parent included in the household must need child care because they are engaged in one (1) of the qualifying activities listed in Subsections 200.01 through 200.05 of this rule. (5-1-11)

01. Employment. The parent is currently employed. (4-2-08)

02. Self-Employment. The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-8-09)

a. For the first twelve (12) months of self-employment benefits, actual activity hours are used. (3-2-17)

b. At ~~the time of redetermination~~ month thirteen (13), the number of activity hours will be limited. To calculate the activity hours, the net monthly self-employment income is divided by the current federal minimum wage. The qualifying activity hours are the lesser of the calculated activity hours or actual activity hours. ~~(3-2-17)~~()

03. Training or Education. The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)

b. Persons who are attending post-baccalaureate classes with no other qualifying activity, do not qualify for child care benefits. (3-2-17)

c. More than forty-eight (48) months of post-secondary education has been used as a qualifying activity. (3-2-17)

04. Preventive Services. The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

05. Personal Responsibility Contract (PRC) or Other Negotiated Agreement. The parent is completing Personal Responsibility Contract (PRC) or other self-sufficiency activities negotiated between the Department and the parent. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

500. ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: (4-2-08)

01. Payment for Employment, Training, Education, or Preventive Service Hours. Child care must be reasonably related to the hours of the parent's qualifying activities. (5-1-11)

02. One-Time Registration Fees. One-time fees for registering a child in a child care facility are payable above the local market rate, if the fee is charged to all who enroll in the facility. ~~Fees may~~ **Reimbursement can** not exceed two hundred fifty dollars (\$250) and must be usual and customary rates charged to all families. Registration fees are separate from local market rates. (3-2-17)()

501. NON-ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child is not payable under the following conditions: (3-2-17)

01. Family Member or Guardian Providing Child Care. A parent, step-parent, or ~~unmarried parent guardian~~ will not be paid for providing child care to ~~his~~ **their own** child ~~or ward. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment.~~ (3-2-17)()

02. Provider Living at Same Address as Child. ICCP will not pay for in-home child care if the provider lives at the same address as the child. (3-2-17)

03. School Tuition, Academic Credit, or Tutoring. ICCP payments will not be made for school tuition, academic credit, or tutoring for school age children; this includes: (3-2-17)

- a.** Any services provided to such students during the regular school day, including kindergarten; (3-2-17)
- b.** Any services for which such students receive academic credit toward graduation; or (3-2-17)
- c.** Any instructional services which supplant or duplicate the academic program of any public or private school. (3-2-17)

502. AMOUNT OF PAYMENT.

Child care payments will be based on Subsections 502.01 through 502.04 of this rule. (3-2-17)

01. Payment Rate. Payment will be based on the lower of the provider's usual and customary rates or the Local Market Rate (LMR). (3-2-17)

a. The local market rates for child care are the maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted triennially. (3-2-17)

b. Payment rates will be determined by the location of the child care facility. (3-2-17)

c. If the child care facility is not in Idaho, the local market rate will be the rate where the family lives.

(4-2-08)

02. **Usual and Customary Rates.** Rates charged by the child care provider must not exceed the usual and customary rates charged for child care to persons not entitled to receive benefits under ICCP. (7-1-09)

03. **In-Home Care.** Parents are responsible to pay persons providing care in the child's home the minimum wage, as required by the Fair Labor Standards Act (29 U.S.C. 206a) and other applicable state and federal requirements. ~~Department payments must not exceed the lower of the hourly federal minimum wage or actual cost of care.~~ (4-2-08)()

04. **Payments.** Payments will be issued directly to eligible providers. (3-2-17)

(BREAK IN CONTINUITY OF SECTIONS)

600. CHANGE REPORTING REQUIREMENTS.

A family who receives child care benefits must report the following permanent changes by the tenth day of the month following the month in which the change occurred. (4-4-13)

01. **Change in Eligible Full-time or Part-time Activity Hours.** (4-4-13)()

02. **Change in ~~Your~~ Permanent Address.** (5-1-11)()

03. **Change in Household Composition.** (4-4-13)

04. **Change in Income.** (3-2-17)

~~a- When the household's total gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Guideline (FPG) for the household size.~~ (4-4-13)

~~b-~~ When the household's total gross income exceeds the income limit for the program, as described the higher of either one hundred and thirty percent (130%) of the Federal Poverty Guidelines (FPG) or eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size. (3-2-17)()

05. **Change in Child Care Provider.** (5-1-11)

(BREAK IN CONTINUITY OF SECTIONS)

602. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.

01. **Redetermination.** The Department must redetermine eligibility for child care benefits at least every twelve (12) months. (3-2-17)

02. **Graduated Phase Out.** At the time of redetermination, if a household's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size, ~~but does not exceed eighty five percent (85%) of the State Median Income (SMI) for a family of the same size, benefits for eligible children will be paid for three (3) months in an amount equal to the payment amount of the 12th month of eligibility, if all other eligibility criteria are met~~ may receive a graduated phase out benefit. Graduated phase out benefits are limited to twelve (12) months following the completion of a redetermination. (3-2-17)()

(BREAK IN CONTINUITY OF SECTIONS)

701. RECOUPMENT OF OVERPAYMENTS.

~~01. **Recoupment of Overpayments.** The Department may recoup or recover the amount paid for child care services from a provider or a parent. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Interest will not accrue on overpayments made due to Department error. An overpayment due to family, agency, or provider error, IPV or fraud must be recovered in full. A parent or provider may negotiate a repayment schedule with the Department.~~ (3-2-17)()

~~02. **Parental Repayment Requirement.** A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section 600 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department.~~ (5-1-11)

702. INTENTIONAL PROGRAM VIOLATIONS (IPV).

An IPV is an intentionally false or misleading action or statement as identified below in Subsections 702.01 through 702.08 of this rule. An IPV is established when a family member or the child care provider admits the IPV in writing and waives the right to an administrative hearing, or when determined by an administrative hearing, a court decision, or through deferred adjudication. Deferred adjudication exists when the court defers a determination of guilt because the accused family member or child care provider meets the terms of a court order or an agreement with the prosecutor. (4-2-08)

01. False Statement. An individual makes a false statement to the Department, either orally or in writing, in order to participate in the Idaho Child Care Program. (4-2-08)

02. Misleading Statement. An individual makes a misleading statement to the Department, either orally or in writing, to participate in the Idaho Child Care Program. (4-2-08)

03. Misrepresentation of Fact. An individual misrepresents one (1) or more facts to the Department, either orally or in writing, to participate in the Idaho Child Care Program. (4-2-08)

04. Concealing Fact. An individual conceals or withholds one (1) or more facts to participate in the Idaho Child Care Program. (4-2-08)

05. Non-Compliance With Rules and Regulations. An individual fails repeatedly or substantially to comply with this chapter of rules. (4-2-08)

06. Violation of Provider Agreement. An individual knowingly violates any term of his provider agreement. (4-2-08)

~~07. **Failure to Repay.** An individual has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement.~~ (4-2-08)

087. Failure to Meet Qualifications. A provider fails to meet the qualifications specifically required by this chapter of rules or by any applicable licensing board. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

802. HEALTH AND SAFETY REQUIREMENTS.

All providers must comply with the health and safety requirements listed in Subsections 802.01 through 802.13 of this rule. All providers must agree to an annual, unannounced health and safety inspection, with the exception of in-home child care described in Section 401 of these rules. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. (3-2-17)

- 01. Age of Provider.** All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (4-2-08)
- 02. Sanitary Food Preparation.** Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (4-2-08)
- 03. Food Storage.** All food served in child care facilities must be stored to protect it from potential contamination. (4-2-08)
- 04. Hazardous Substances.** Medicines, cleaning supplies, and other hazardous substances must be handled safely and stored out of the reach of children. Biocontaminants must be disposed of appropriately. (3-2-17)
- 05. Emergency Communication.** A telephone or some type of emergency communication system is required. (4-2-08)
- 06. Smoke Detectors, Fire Extinguishers, and Exits.** A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (4-2-08)
- 07. Hand Washing.** Each provider must wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (4-2-08)
- 08. CPR/First Aid.** Providers must insure that at all times children are present at least one (1) adult on the premises has current certification in pediatric rescue breathing (CPR) and pediatric first aid treatment from a certified instructor. (3-2-17)
- 09. Health of Provider.** Each provider must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. (4-2-08)
- 10. Child Abuse.** Providers must report suspected child abuse to the appropriate authority. (4-2-08)
- 11. Transportation.** Providers who transport children as part of their child care operations must operate safely and legally, using child safety restraints and seat belts as required by state and local statutes. (3-2-17)
- 12. Disaster and Emergency Planning.** Providers must have documented policies and procedures planning for emergencies resulting from a natural disaster, or man-caused event that include: (3-2-17)
- a.** Evacuation, relocation, shelter-in-place, and lock-down procedures, and procedures for communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. (3-2-17)
 - b.** Procedures for staff and volunteer emergency preparedness training and practice drills. (3-2-17)
 - c.** Guidelines for the continuation of child care services in the period following the emergency or disaster. (3-2-17)
- 13. Environmental Safety.** Building and physical premises must be safe, including identification of and protection from hazards that can cause bodily injury including electrical hazards, bodies of water, and vehicular traffic. (3-2-17)
- 14. Safe Sleep.** Providers must place newborn infants to twelve (12) months in a safe sleep environment. Safe sleep practices include, alone, on their backs, and in a Consumer Product Safety Commission (CPSC) certified crib. ()

803. CHILD CARE PROVIDER TRAINING REQUIREMENTS.

Each child care provider must receive and ensure that each staff member who provides child care receives and completes twelve (12) hours of ongoing training every twelve (12) months after the staff member's date of hire. (3-2-17)

01. Training Contents. Training must be related to continuing education in child development, teaching and curriculum, health and safety, and business practices. ~~The following Pediatric rescue breathing (CPR) and pediatric first aid treatment training will not count towards the required twelve (12) hours of annual training.~~ (3-2-17)()

~~**a.** *Pediatric rescue breathing (CPR) and pediatric first aid treatment training; and* (3-2-17)~~

~~**b.** *Trainings related to participation with the Child and Adult Care Food Program (CACFP).* (3-2-17)~~

02. Documented Training. It is the responsibility of the child care provider to ensure that each staff member who provides child care has completed twelve (12) hours of training each year. The training must be documented in the staff member's record. (3-2-17)

03. Staff Training Records. Each child care provider is responsible for maintaining documentation of staff's training and must produce this documentation when the provider agreement is renewed annually. (3-2-17)