

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 16.03.09 - Medicaid Basic Plan Benefits - Temporary and Proposed Rule (Docket No.
16-0309-1701);

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No.
16-0310-1701);

IDAPA 16.04.17 - Rules Governing Residential Habilitation Agencies - Proposed Rule (Docket
No. 16-0417-1701);

IDAPA 16.04.17 - Rules Governing Residential Habilitation Agencies - Proposed Rule (Docket
No. 16-0417-1702).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/15/2017. 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 10/16/2017.

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: August 28, 2017

SUBJECT: Department of Health and Welfare

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Temporary and Proposed Rule (Docket No. 16-0309-1701)

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No. 16-0310-1701)

IDAPA 16.04.17 - Rules Governing Residential Habilitation Agencies - Proposed Rule (Docket No. 16-0417-1701)

IDAPA 16.04.17 - Rules Governing Residential Habilitation Agencies - Proposed Rule (Docket No. 16-0417-1702)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.03.09, 16.03.10, and 16.04.17.

16.03.09

This rule, also a temporary rule, allows schools to retroactively bill for school-based Medicaid services up to 30 days. The purpose of the rule is to rectify the time lag between when the need for a Medicaid service is identified by the school and when a referral to a physician or other health care practitioner is made. Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Governor finds that the temporary rule is justified because the rule confers a benefit. The Department states that this rulemaking is authorized pursuant to Sections 56-202, 56-264, and 56-1610, Idaho Code.

16.03.10

This rule, also a temporary rule, allows a behavioral care unit to begin receiving Medicaid reimbursement within its first year of operation, after an initial cost reporting period of 60 days. Under the present rule, behavioral care units must operate for a full year before being eligible for Medicaid reimbursement. The purpose of the rule is to allow more behavioral care units to open in the state and thus improve access to behavioral health care.

Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Governor finds that the temporary rule is justified because the rule confers a benefit. The

Department states that this rulemaking is authorized pursuant to Sections 56-202, 56-264, and 56-1610, Idaho Code.

16.04.17

The Department submits notice of two proposed rules at this IDAPA chapter. The first proposed rule repeals the existing chapter. The second proposed rule would enact rewritten language relating to residential habilitation agencies. The purpose of the rewritten language is to revise and update certification requirements for residential habilitation agencies in order to meet best practices and also to remove obsolete language.

Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Department states that this rulemaking is authorized pursuant to Section 39-4605, Idaho Code.

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

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections: 56-202(b), 56-264, and 56-1610, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Medicaid Advisory Committee and schools held negotiations concerning the issue of schools not being able to receive Medicaid reimbursement for Medicaid services provided between the time the need was identified by the school and the time a recommendation or referral from a physician or practitioner of the healing arts could be obtained. Amendments to these rules will allow schools to bill for services identified as needed retroactively, up to 30 days, once a recommendation or referral for a Medicaid reimbursable service delivered in a school setting is received. This time frame aligns with the Department's therapy rules in Section 733 of this chapter.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule confers a benefit as it provides for the schools to be reimbursed by Medicaid for certain services.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any 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 Department estimates that there will be no general fund impact for the 30-day retroactive billing period for Medicaid reimbursable services for the 2017-18 school year. Schools provide their own matching dollars for these services. The estimated total fiscal impact is \$994,000 of which the federal share is \$695,500; and the school matching share is \$298,500.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was held by video conference throughout the state and a live meeting in Boise, on May 23, 2017. The Notice of Negotiated Rulemaking published in the May 3, 2017, Idaho Administrative Rules, [Vol. 17-5, page 65](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Angie Williams at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0309-1701
(Only Those Sections With Amendments Are Shown.)**

853. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.

The Department will pay school districts and charter schools for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (7-1-13)

01. Excluded Services. The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

a. Vocational Services. (3-30-07)

b. Educational Services. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

c. Recreational Services. (3-30-07)

d. Payment for school-related services will not be provided to students who are inpatients in nursing homes or hospitals. (7-1-16)

02. Evaluation And Diagnostic Services. Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

a. Be recommended or referred by a physician or other practitioner of the healing arts. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to ~~receiving a~~ the signed and dated recommendation or referral; (7-1-13)(8-1-17)T

b. Be conducted by qualified professionals for the respective discipline as defined in Section 855 of these rules; (3-20-14)

c. Be directed toward a diagnosis; (7-1-16)

d. Include recommended interventions to address each need; and (7-1-16)

e. Include name, title, and signature of the person conducting the evaluation. (7-1-16)

03. Reimbursable Services. School districts and charter schools can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts for the Medicaid services for which the school district or charter school is seeking reimbursement. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to ~~receiving a~~ the signed and dated recommendation or referral. The recommendations or referrals are valid up to three hundred sixty-five (365) days. ~~(7-1-13)~~(8-1-17)T

a. Behavioral Intervention. Behavioral Intervention is used to promote the student's ability to participate in educational services, as defined in Section 850 of these rules, through a consistent, assertive, and continuous intervention process to address behavior goals identified on the IEP. It includes the development of replacement behaviors by conducting a functional behavior assessment and behavior implementation plan with the purpose of preventing or treating behavioral conditions for students who exhibit maladaptive behaviors. Services include individual or group behavioral interventions. (7-1-16)

i. Group services must be provided by one (1) qualified staff providing direct services for a maximum of three (3) students. (7-1-16)

ii. As the number and severity of the students with behavioral issues increases, the staff-to-student ratio must be adjusted accordingly. (7-1-16)

iii. Group services should only be delivered when the child's goals relate to benefiting from group interaction. (7-1-13)

b. Behavioral Consultation. Behavioral consultation assists other service professionals by consulting with the IEP team during the assessment process, performing advanced assessment, coordinating the implementation of the behavior implementation plan and providing ongoing training to the behavioral interventionist and other team members. (7-1-13)

i. Behavioral consultation cannot be provided as a direct intervention service. (7-1-13)

ii. Behavioral consultation must be limited to thirty-six (36) hours per student per year. (7-1-13)

c. Medical Equipment and Supplies. Medical equipment and supplies that are covered by Medicaid must be medically necessary, ordered by a physician, and prior authorized. Authorized items must be for use at the school where the service is provided. Equipment that is too large or unsanitary to transport from home to school and back may be covered, if prior authorized. The equipment and supplies must be for the student's exclusive use and must be transferred with the student if the student changes schools. All equipment purchased by Medicaid belongs to the student. (7-1-16)

d. Nursing Services. Skilled nursing services must be provided by a licensed nurse, within the scope of his or her practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (7-1-16)

e. Occupational Therapy and Evaluation. Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

f. Personal Care Services. School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements. Personal care services do not require a goal on the plan of service. The provider must deliver at least one (1) of the following services: (7-1-16)

i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (7-1-13)

ii. Assistance with bladder or bowel requirements that may include helping the student to and from the bathroom or assisting the student with bathroom routines; (7-1-16)

iii. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to

- medical need; (7-1-13)
- iv. Assisting the student with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (7-1-13)
 - v. Non-nasogastric gastrostomy tube feedings, if the task is not complex and can be safely performed in the given student care situation, and the requirements are met in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 303.01. (7-1-13)
 - g. Physical Therapy and Evaluation. (3-30-07)
 - h. Psychological Evaluation. (3-30-07)
 - i. Psychotherapy. (3-30-07)
 - j. Community Based Rehabilitation Services (CBRS) Services and Evaluation. Community Based Rehabilitation Services and evaluation services that are interventions to reduce the student's disability by assisting in gaining and utilizing skills necessary to participate in school. Training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, and coping skills are types of interventions that may be reimbursed. This service is to prevent placement of the student into a more restrictive educational situation. (7-1-16)
 - k. Speech/Audiological Therapy and Evaluation. (3-30-07)
 - l. Social History and Evaluation. (3-30-07)
 - m. Transportation Services. School districts and charter schools can receive reimbursement for mileage for transporting a student to and from home and school when: (7-1-16)
 - i. The student requires special transportation assistance, a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student *and recommended by a physician or other practitioner of the healing arts*; ~~(7-1-16)~~(8-1-17)T
 - ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)
 - iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)
 - iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)
 - v. The mileage, as well as the services performed by the attendant, are documented. See Section 855 of these rules for documentation requirements. (3-20-14)
 - n. Interpretive Services. Interpretive services needed by a student who is deaf or does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (7-1-13)
 - i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; documentation for interpretive service must include the Medicaid reimbursable health-related service being provided while the interpretive service is provided. (7-1-16)
 - ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)
 - iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

854. SCHOOL-BASED SERVICE: PROCEDURAL REQUIREMENTS.

The following documentation must be maintained by the provider and retained for a period of five (5) years: (7-1-16)

01. Individualized Education Program (IEP) and Other Service Plans. School districts and charter schools may bill for Medicaid services covered by a current Individualized Education Program (IEP), transitional Individualized Family Service Plan (IFSP), or Services Plan (SP) defined in the [Idaho Special Education Manual](#) on the State Department of Education website for parentally placed private school students with disabilities when designated funds are available for special education and related services. The plan must be developed within the previous three hundred sixty-five (365) days which indicates the need for one (1) or more medically-necessary health-related service, and lists all the Medicaid reimbursable services for which the school district or charter school is requesting reimbursement. The IEP and transitional IFSP must include: (7-1-16)

- a. Type, frequency, and duration of the service(s) provided; (7-1-13)
- b. Title of the provider(s), including the direct care staff delivering services under the supervision of the professional; (7-1-13)
- c. Measurable goals, when goals are required for the service; and (7-1-13)
- d. Specific place of service, if provided in a location other than school. (7-1-16)

02. Evaluations and Assessments. Evaluations and assessments must support services billed to Medicaid, and must accurately reflect the student's current status. Evaluations and assessments must be completed at least every (3) years. (7-1-13)

03. Service Detail Reports. A service detail report that includes: (7-1-13)

- a. Name of student; (7-1-13)
- b. Name, title, and signature of the person providing the service; (7-1-16)
- c. Date, time, and duration of service; (7-1-13)
- d. Place of service, if provided in a location other than school; (7-1-13)
- e. Category of service and brief description of the specific areas addressed; and (7-1-13)
- f. Student's response to the service when required for the service. (7-1-13)

04. One Hundred Twenty Day Review. A documented review of progress toward each service plan goal completed at least every one hundred twenty (120) days from the date of the annual plan. (7-1-13)

05. Documentation of Qualifications of Providers. (7-1-13)

06. Copies of Required Referrals and Recommendations. Copies of required referrals and recommendations. (7-1-13)

a. School-based services must be recommended or referred by a physician or other practitioner of the healing arts for all Medicaid services for which the school district or charter school is receiving reimbursement. (7-1-13)

b. A recommendation or referral must be obtained ~~prior to~~ within thirty (30) days of the provision of services for which the school district or charter school is seeking reimbursement. Therapy requirements for the physician's order are identified in Section 733 of these rules. ~~(7-1-16)~~ (8-1-17)T

c. A recommendation or referral must be obtained for the service at least every three hundred sixty-

five (365) days.

(7-1-16)

07. Parental Notification. School districts and charter schools must document that parents were notified of the health-related services and equipment for which they will bill Medicaid. Notification must comply with the requirements in Subsection 854.08 of this rule. (3-20-14)

08. Requirements for Cooperation with and Notification of Parents and Agencies. Each school district or charter school billing for Medicaid services must act in cooperation with students' parent or guardian, and with community and state agencies and professionals who provide like Medicaid services to the student. (7-1-16)

a. Notification of Parents. For all students who are receiving Medicaid reimbursed services, school districts and charter schools must document that parents are notified of the Medicaid services and equipment for which they will bill Medicaid. Notification must describe the service(s), service provider(s), and state the type, location, frequency, and duration of the service(s). The school district must document that they provided the student's parent or guardian with a current copy of the child's plan and any pertinent addenda; and (7-1-16)

b. Primary Care Physician (PCP). School districts and charter schools must request the name of the student's primary care physician and request a written consent to release and obtain information between the PCP and the school from the parent or guardian. (7-1-16)

c. Other Community and State Agencies. Upon receiving a request for a copy of the evaluations or the current plan, the school district or charter school must furnish the requesting agency or professional with a copy of the plan or appropriate evaluation after obtaining consent for release of information from the student's parent or guardian. (7-1-13)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections: 56-202(b), 56-264, and 56-1610, Idaho Code.

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

PUBLIC HEARING
Tuesday, August 22, 2017 – 1:00 pm (Local)

Central Idaho – DHW Office
3232 Elder Street
Conference Room D – East
Boise, ID 83705

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Providers have expressed their concerns about the difficulties they have entering the market due to the rate methodology related to starting a Behavioral Care Unit. A rule change is needed to facilitate increasing the number of Behavioral Care Unit facilities in Idaho and improving access to behavioral health care.

Currently, a provider must self-fund the first year of operations in order to generate a full year of cost reporting. After the initial year, reimbursement for providing services as a Behavioral Care Unit can commence. These rule changes will shorten the cost reporting period from a full year to a minimum of sixty (60) calendar days. The expedited reimbursement will allow more providers to enter the market and reduce access issues throughout the state.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that this temporary adoption of rule confers a benefit as it will make it easier for providers who wish to start up Behavioral Care Units to enter the market.

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 fiscal impact to the General Fund or dedicated funds. While more providers would enter the market, and receive reimbursement more rapidly, the Department will save money as a result of fewer patients staying in hospitals due to increased access to Behavioral Care Units.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 3, 2017, Idaho Administrative Bulletin, [Vol. 17-5, page 66](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact KayLee Leavitt at (208) 287-1175.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

Tamara Prisock
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THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0310-1701
(Only Those Sections With Amendments Are Shown.)

267. NURSING FACILITY: TREATMENT OF NEWLY LICENSED FACILITIES WITH BEHAVIORAL CARE UNITS (BCUS).

01. ~~Criteria to Qualify as a New BCU. A nursing facility provider must meet the following criteria to qualify as a new BCU nursing facility provider:~~ Facilities licensed subsequent to September 1, 2017, must meet the qualifications for a BCU described in Subsections 266.02, 266.03, and 266.05 through 266.15 of these rules. BCU facilities existing prior to this date that receive a new license due to a change in ownership will not be subject to the provisions of this rule. (4-4-13)(9-1-17)T

~~a. BCU days from the cost report period, regardless of payer source, are divided by the total occupied days in the nursing facility, and that calculation must equal or exceed a minimum of twenty percent (20%).~~ (4-4-13)

~~b. A qualifying cost report must demonstrate that the nursing facility provider has a qualifying program in place with residents.~~ (4-4-13)

02. ~~First Cost Reporting Year. No BCU eligibility, or increased direct care cost limit will be allowed in the first cost reporting year the BCU program is added.~~ (4-4-13)

03. ~~Qualifying Report in Tandem with BCU Eligibility. Once a qualifying cost report is submitted for the BCU program, and the nursing facility provider qualifies in tandem with the BCU eligibility criteria, the cost report will be used to set a prospective rate effective the following July 1 rate period with the increased direct care cost limit.~~ (4-4-13)

02. Reimbursement for Years One (1) Through Three (3). Beginning with the first day of the first month following approval of the BCU license and when the provider can demonstrate that BCU days from a minimum of sixty (60) calendar days, regardless of payer source, divided by total census days for that same sixty-day (60) period, equals or exceeds a minimum of twenty percent (20%), the provider's rate will change to reflect BCU services. The provider will be reimbursed at the median rate for BCU facilities of that type, either freestanding or hospital-based, for the remaining period within the first three (3) full years of operation. If there are no facilities of the

same type (for example, no other hospital-based BCUs), the provider will receive the median rate for their type, but the direct care portion of the rate will be revised to the median rate of existing BCUs. The rate change to reflect BCU services will not be retroactive to rate quarters paid prior to meeting the twenty percent (20%) BCU occupancy requirement. (9-1-17)T

a. A nursing facility must apply for BCU eligibility on an annual basis in accordance with Subsection 266.07 of these rules. If the provider did not meet the BCU qualifications described in Section 266 of these rules, with the exception of Subsections 266.01 and 266.04, for a full cost report year corresponding to the initial application year, the twenty percent (20%) BCU day requirement will apply only to days beginning with the first day of BCU eligibility to the end of the year. (9-1-17)T

b. During the period of limitation, the facility's rate will be modified annually on July 1st to reflect the current median rate for skilled care facilities of that type. After the first three (3) complete years of operations, the facility will have its rate established at the next July 1st with the existing facilities in accordance with Subsections 266.03 and 266.05 of these rules. (9-1-17)T

c. During the period of limitation, providers must demonstrate annually that BCU days were equal to or exceeded twenty percent (20%), as described in Subsection 267.02 of this rule. Providers must provide a report to the Department with a calculation of BCU days for each month during the period being reviewed. If the twelve-month (12) average falls below twenty percent (20%), then the BCU reimbursement will revert back to the median rate per Section 260 of these rules. Once the Department has established the provider has met the requirements of Subsection 267.01 of this rule they will be eligible for a new rate outlined in Subsection 267.02.b. of this rule. (9-1-17)T

268. NURSING FACILITY: EXISTING PROVIDER ELECTS TO ADD BEHAVIORAL CARE UNIT (BCU).

An existing nursing facility provider that elects to add a BCU on or after July 1, 2011 ~~September 1, 2017~~, may be deemed eligible after meeting the following requirements: (4-4-13)(9-1-17)T

~~01. **Qualifying Cost Report.** A qualifying cost report that demonstrates a qualifying program is in place with residents and meets the criteria in Section 282 of these rules.~~ (4-4-13)

021. Meet Criteria for BCU. The nursing facility provider must meet the criteria for a BCU described in Section 266 of these rules. (4-4-13)

02. BCU Eligible Days. The provider must demonstrate that BCU days from a minimum of sixty (60) calendar days, regardless of payer source, divided by total census days for that same sixty (60) day period, equals or exceeds a minimum of twenty percent (20%). (9-1-17)T

03. BCU Payments. ~~No BCU payments or increased direct care cost limits will be allowed in the first cost reporting year the program is added. Once a qualifying cost report is submitted, and the provider qualifies in tandem with the BCU criteria, the cost report will be used to set a prospective rate, effective with the following July 1 rate period with the increased direct care cost limit. Once the provider has met the requirements of Subsections 268.01 and 268.02 of this rule, beginning with the first day of the first quarter following approval of the BCU license, the provider's rate will change to reflect BCU services. At no time will the rate be adjusted mid-quarter. The rate will be calculated as follows.~~ (4-4-13)(9-1-17)T

a. The indirect costs, costs exempt from limitations, and property cost will be reimbursed in the same manner as all other providers in accordance with reimbursement provisions contained in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (9-1-17)T

b. The direct cost portion of the rate will be reimbursed as a prospective rate not subject to a change from an interim rate to a final rate. The direct care portion of the rate will be calculated by determining the median direct care rate for BCU facilities of that type (freestanding or hospital-based) effective on July 1 of the rate year. If there are no facilities of the same type (for example no other hospital-based BCUs), the direct care portion of the rate will be set at the median rate of existing BCUs. The direct care portion of the rate will be updated on July 1 of each rate year until the provider has a qualifying twelve-month (12) cost report, as described in Section 268.03.d. of this

rule. (9-1-17)T

c. The provider's total calculated rate will be subject to customary charge limitations and any other rate reductions implemented for other providers. (9-1-17)T

d. Once the provider has a twelve-month (12) cost report that contains a full year of BCU costs, their rate will be calculated in the same manner as other providers in accordance with IDAPA 16.03.10. "Medicaid Enhanced Plan Benefits." (9-1-17)T

e. A nursing facility must apply for BCU eligibility on an annual basis in accordance with Section 266 of these rules. If the provider was not a BCU for a full cost report year, the twenty percent (20%) BCU day requirement will apply only to days beginning with the first day of BCU eligibility to the end of the year. (9-1-17)T

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.04.17 – RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES
DOCKET NO. 16-0417-1701 (CHAPTER REPEAL)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-4605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held at the below DHW Office as follows:

PUBLIC HEARING Friday, August 11, 2017 1:00 p.m. (Local)	PUBLIC HEARING Monday, August 14, 2017 1:30 p.m. (Local)	PUBLIC HEARING Thursday, August 17, 2017 1:30 p.m. (Local)
Northern Idaho 1120 Ironwood Drive, Ste. 102 Large Conference Rm. Coeur d’Alene, ID 83814	Central Idaho 3232 W. Elder Street Conf. Rm D - West/East Boise, ID 83705	Southeastern Idaho 1070 Hiline Road Room 230 Pocatello, ID 83201

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

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

This chapter of rules is being repealed under this docket and completely rewritten under companion Docket No. 16-0417-1702.

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 the state general fund or any other funds related to this rulemaking. These changes are intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 7, 2016, Idaho Administrative Bulletin, [Vol. 16-12, pages 74 and 75](#); in the January 4, 2017, Idaho Administrative Bulletin, [Vol. 17-1, page 125](#); and in the February 1, 2017, Idaho Administrative Bulletin, [Vol. 17-2, page 29](#). Six negotiated meetings were conducted around the state in Boise, Twin Falls, Pocatello, Idaho Falls, Lewiston, and Coeur d’Alene from December 2016 through February 2017. The Department also held earlier negotiated meetings in 2016.

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 Eric Brown at (208) 334-0649.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 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

IDAPA 16.04.17 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.04.17 – RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES
DOCKET NO. 16-0417-1702 (CHAPTER REWRITE)
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 39-4605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held at the below DHW Offices as follows:

PUBLIC HEARING Friday, August 11, 2017 1:00 p.m. (Local)	PUBLIC HEARING Monday, August 14, 2017 1:30 p.m. (Local)	PUBLIC HEARING Thursday, August 17, 2017 1:30 p.m. (Local)
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The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

This chapter of rules is being completely rewritten to meet current best practices for residential habilitation agencies operating in Idaho and to update and revise the certification requirements for these agencies. The rules have not been updated for several years and amending these requirements for certification and removing obsolete language will make them more user-friendly.

- The new chapter amends and updates:
1. Legal and informational sections;
 2. Terms and Definitions;
 3. Certification requirements; and
 4. Enforcement remedies.

The current chapter is being repealed under companion Docket No. 16-0417-1701 to make way for this rewrite.

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 the state general fund or any other funds related to this rulemaking. These changes are intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the December 7, 2016, Idaho Administrative Bulletin, [Vol. 16-12, pages 74 and 75](#); in the January 4, 2017, Idaho Administrative Bulletin, [Vol. 17-1, page 125](#); and in the February 1, 2017, Idaho Administrative Bulletin, [Vol. 17-2, page 29](#). Six negotiated meetings were conducted around the state in Boise, Twin Falls, Pocatello, Idaho Falls, Lewiston, and Coeur d’Alene from December 2016 through February 2017. The Department also held earlier negotiated meetings in 2016.

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 Eric Brown at (208) 334-0649.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2017.

DATED this 10th day of July, 2017.

Tamara Prisock
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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. 16-0417-1702
(This Chapter is Being Rewritten in its Entirety.)

IDAPA 16
TITLE 04
CHAPTER 17

16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code, and under Section 56-1003, Idaho Code, to adopt and enforce rules, standards, and certification criteria for Residential Habilitation Agencies and provide for the delivery of appropriate services of habilitation and rehabilitation to the eligible population. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." ()

02. Scope. These rules govern: ()

a. The certification of residential habilitation agencies; and ()

b. Establish standards and minimum requirements for residential habilitation agencies that provide supported living services to adults living in their own homes that are not provider-owned, leased, or rented residences. The provisions are intended to regulate agencies so that services to participants will optimize participant opportunities for independence and self-determination while assuring adequate supports, services, participant satisfaction, and health and safety. Residential habilitation agencies will provide individualized services and supports

encouraging participant choice, providing the greatest degree of independence possible, enhancing the quality of life, and maintaining community integration and participation. Services provided by such agencies are intended to be person-centered and participant-driven, and based on a person-centered plan to meet each participant's needs for self-sufficiency, medical care, and personal development with goals that safely encourage each participant to become a productive member of the community in which he lives. Access to these services must be authorized in accordance to the procedures of the paying entity. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. ()

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this chapter of rules. ()

005. OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – TELEPHONE – WEBSITE.

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

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

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

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

05. Internet Website. The Department's internet website is <http://www.healthandwelfare.idaho.gov/>. ()

06. Division of Licensing and Certification. The Department's Division of Licensing and Certification Unit is located at 3232 Elder Street, Boise, ID 83705; Phone: (208) 334-6626. ()

07. Division Webpage. The Division of Licensing and Certification's website is <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification>. ()

006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

007. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Verification of Compliance. The agency must verify that all employees and subcontractors delivering residential habilitation agency services have complied with IDAPA 16.05.06, "Criminal History and Background Checks." ()

02. Requirement to Report Additional Criminal Convictions, Pending Investigations, or Pending Charges. Once an employee or subcontractor delivering residential habilitation agency services has received a criminal history clearance, any additional criminal convictions, pending investigations, or pending charges must be reported to the Department or its designee when the agency learns of the convictions, investigations, or charges. ()

010. DEFINITIONS -- A THROUGH N.

For the purposes of these rules the following terms are used as defined below: ()

01. Abuse. The non-accidental act of sexual, physical, verbal, or mental mistreatment, or injury of a resident through the action or inaction of another individual. ()

02. Administrator. The individual who has primary responsibility for the direction and control of an agency. ()

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

04. Agency. Any business entity that directly provides residential habilitation supported living services to adults with disabilities. ()

05. Board. The Idaho Board of Health and Welfare. ()

06. Certificate. A permit to operate a residential habilitation agency. ()

07. Complaint. A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a participant concerning the services provided by the agency. This expression can be oral, in writing, or by alternative means of communication. ()

08. Complaint Investigation. An investigation of an agency to determine the validity of allegations of non-compliance with applicable state rules. ()

09. Deficiency. A determination of non-compliance with a specific rule, or part of a rule. ()

10. Department. The Idaho Department of Health and Welfare, or a person authorized to act on behalf of the Department. ()

11. Direct Service Staff. Any individual employed by the agency that provides direct services and supports to the participant. ()

12. Director. Director of the Idaho Department of Health and Welfare, or his designee. ()

13. Exploitation. An action that may include, but is not limited to, the unjust or improper use of a vulnerable participant's financial power of attorney, funds, property, or resources by another person for profit or advantage. ()

14. Functional Assessment. An evaluation of the participant's strengths, needs, and interests that guides the development of program plans or plan of care. ()

15. Governing Authority. The designated person or persons (i.e., board) who assume full responsibility for the conduct and operations of the residential habilitation services agency. ()

16. Guardian. A legally-appointed person who has decision-making responsibility for the care or property of another, under Section 66-404, Idaho Code. ()

17. Habilitation services. Service aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: self-direction, money management, daily living skills, socialization, mobility, and behavior-shaping and management. ()

18. Immediate Jeopardy. A situation in which the provider's non-compliance with one (1) or more requirements in this chapter of rules has caused, or is likely to cause, serious injury, harm, impairment, or death to a

participant. ()

19. Inadequate Care. The failure to provide the services required to meet the terms of the plan of service. ()

011. DEFINITIONS -- M THROUGH Z.

For the purposes of these rules the following terms are used as defined below: ()

01. Measurable Objective. A statement that specifically describes the skill to be acquired or the service or support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. ()

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

03. Neglect. The failure to provide food, clothing, shelter, or medical care reasonably necessary to sustain the life and health of a vulnerable adult. ()

04. Owner. Any person or entity, having legal ownership of the agency as an operating business, regardless of who owns the real property. ()

05. Participant. An adult who is receiving residential habilitation supported living services. ()

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

07. Physician. Any person licensed as required by Title 54, Chapter 18, Idaho Code. ()

08. Plan of Service. An initial or annual plan that identifies all services and supports based on a planning process. Plans are authorized annually. ()

09. Program Plan. The participant's plan that details how the participant's individualized goals will be addressed. ()

10. Progress Note. A written notation, recording participant response to program objective, date, time, duration, and type of service signed and dated by the staff that provided services. ()

11. PRN (Pro Re Nata) Medication. A medication that is given "as needed" or "as the circumstances warrant" to treat a symptom of a medical or psychiatric condition that has a periodic, episodic, or breakthrough presentation. The assistance with medications for PRN medications must be providing as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing-Unlicensed Assistive personnel (UAP)." ()

12. Provisional Certificate. A certificate issued by the Department to a residential habilitation agency with deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, but not to exceed, six (6) months. ()

13. Quarterly. For the purpose of these rules, quarterly is defined as every three (3) months. ()

14. Residential Habilitation. Services consisting of an integrated array of individually tailored services and supports furnished to an eligible participant that are designed to assist him to reside successfully in his own home, with his family, or alternate family home. Residential habilitation includes habilitation services, personal care services, and skill training. Individuals who provide residential habilitation supported living services in the home of the participant must be employed by a residential habilitation agency. ()

15. Residential Habilitation Professional. An individual who has at least one (1) year of experience working directly with individuals with intellectual disabilities or developmental disabilities, and meets the

requirements in 42 CFR 483.430 (a). ()

16. Seclusionary Time Out. The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration, or probability of the occurrence of a response, and entails the removal of the individual to a secluded setting monitored consistently by staff. ()

17. Self-Neglect. The failure of a vulnerable adult to provide food, clothing, shelter, or medical care reasonably necessary to sustain the life and health for himself. ()

18. Services. Paid services authorized on the plan of service that enable the individual to reside safely and effectively in his own home. ()

19. Skill Training. To train direct service staff to teach the participant how to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility, and other therapeutic programs. ()

20. Substantial Compliance. An agency is in substantial compliance with these rules when none of the following issues have been cited against the agency: ()

a. Abuse; ()

b. Neglect; ()

c. Exploitation; ()

d. Inadequate care; ()

e. A situation in which the agency has operated more than thirty (30) days without an administrator or a residential habilitation professional; or ()

f. Surveyors denied access to records, participants, or agency premises. ()

21. Supervision. Initial and ongoing oversight of service and support elements by the residential habilitation professional or designee. The designee will report directly to the residential habilitation professional. ()

22. Supported Living. One (1), two (2), or three (3) participants who live in their own home or participants who live with a family member or other natural support who is not receiving payment for their care and require staff assistance. A residence is considered to be the participant's own home when it is owned or rented by the participant. The home is defined to be owned or rented by the participant when the participant has entered into a valid mortgage, lease, or rental agreement for the residence and when the participant is able to provide the Department with a copy of the agreement when requested. When two (2) or three (3) participants reside in the same home, services may be provided through individual or group staffing arrangements as approved by the Department. The agency owner, administrator, or personnel are prohibited from owning, leasing, or renting the home. ()

23. Survey. A review conducted by a surveyor to determine an agency's compliance with statutes and rules. ()

24. Surveyor. A person authorized by the Department to conduct surveys or complaint investigations to determine compliance with statutes and rules. ()

012. -- 099. (RESERVED)

100. TYPES OF CERTIFICATES ISSUED.

The Department issues certificates that are in effect for a period of no longer than three (3) years. The types of

certificates issued are as follow: ()

01. Initial Certificate. When the Department determines that all application requirements have been met, an initial certificate is issued for a period of up to six (6) months from the initiation of services. The Department will survey the agency prior to the certificate expiration date to ensure the agency's ongoing capability to provide services and is in substantial compliance with these rules. When the agency is determined to be in substantial compliance, a one (1) year certificate will be granted. ()

02. One-Year Certificate. A one (1) year certificate is issued by the Department when it determines the agency is in substantial compliance with these rules, following an initial or provisional certificate, or when there may be areas of deficient practice which would impact the agency's ability to provide adequate care. An agency is prohibited from receiving consecutive one (1) year certificates. ()

03. Three-Year Certificate. A three (3) year certificate is issued by the Department when it determines the agency requesting certification is in substantial compliance with these rules. ()

04. Provisional Certificate. When an agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a one (1) year certificate will be issued. If the agency is determined to be out of compliance, the certificate will be revoked. ()

101. CERTIFICATION – GENERAL REQUIREMENTS FOR AGENCIES.

01. Certificate Required. ()

a. No agency may provide services within this state until the Department has approved the application for certification and issued the agency a certificate. No agency may provide services within this state without a current certificate. ()

b. The Department is not required to consider the application of any operator, administrator, or owner of an agency whose license or certification has been revoked until five (5) years have lapsed from the date of revocation. ()

02. Application. An application for a certificate must be made to the Department on forms provided by the Department at: www.ddacertification.dhw.idaho.gov. The application must contain the following to be considered complete: ()

a. Application form that contains the name, address, and telephone number of the agency, type of services to be provided, the geographic service area of the agencies, and the anticipated date for the initiation of services; ()

b. An accurate and complete statement of all business names of the agency as filed with the Secretary of State, whether an assumed business name, partnership, corporation, limited liability company, or other entity, that identifies each owner of the agency, and the management structure of the agency; ()

c. A statement that the agency will comply with these rules and all other applicable local, state, and federal requirements, including an assurance that the agency complies with pertinent state and federal requirements governing equal opportunity and nondiscrimination; ()

d. A copy of the proposed organizational chart or plan for staffing of the agency; ()

e. Staff qualifications including resumes, job descriptions, verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," and copies

of state licenses and certificates for staff, when applicable; ()

f. Written policies and procedures for the development and implementation of staff training to meet the requirements of Section 204 of these rules. ()

g. Staff and participant illness policy, communicable disease policy, and other health-related policies and procedures required in Section 300 of these rules; ()

h. Written policies and procedures that address special medical or health care needs of participants required in Section 300 of these rules; ()

i. Written transportation safety policies and procedures required in Section 300 of these rules; ()

j. Written participant grievance policies and procedures to meet requirements in Section 300 of these rules; ()

k. Written medication policies and procedures to address medication standards and requirements to meet requirements in Section 302 of these rules; ()

l. Written policies and procedures that address the development of participants' social skills and the management of participants' maladaptive behavior to meet requirements in Section 303 of these rules; ()

m. Written termination policies and procedures in accordance with Section 400 of these rules; ()

n. Written policies and procedures for reporting incidents to the adult protection authority and to the Department to meet requirements in Section 404 of these rules; ()

o. Written description of the program records system including a completed sample of a program plan, and a monitoring record; ()

p. Written description of the fiscal record system including a sample of program billing; ()

q. Written description of the agency's quality assurance program developed to meet requirements in Section 405 of these rules; ()

r. Any other policies, procedures, or requirements as outlined in these rules; and ()

s. All referenced forms. ()

03. Applications Must Be Complete. Incomplete applications will not be considered and will be returned to the applicant. An applicant may submit an application up to three (3) times within a three hundred sixty-five (365) day period starting on the date of the first submission. If the application is incomplete upon a third submission, the application will be denied. The applicant may not resubmit an application for six (6) months from the date of the denial notice. ()

04. Conformity. Applicants for certification and certified residential habilitation agencies must conform to all applicable rules of the Department. ()

05. Inspection of Residential Habilitation Records. The agency and all records required under these rules must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access may result in revocation of the agency's certificate. ()

102. DENIAL OF AN APPLICATION. The Department may deny any application. ()

01. Causes for Denial. Causes for denial of an application may include: ()

- a. The application does not meet all rule requirements; or ()
- b. The agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or ()
- c. The application is incomplete; or ()
- d. The applicant, owner, operator, or provider has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; ()
- e. The applicant, owner, operator, or provider has been denied or has had revoked any license or certificate for a health facility, residential care or assisted living facility, certified family home, or residential habilitation agency; or ()
- f. The applicant, owner, operator, or provider has been convicted of operating a health facility, residential care or assisted living facility, certified family home, or residential habilitation agency without a license or certificate; or ()
- g. A court has ordered that the applicant, owner, operator, or provider must not operate a health facility, residential care or assisted living facility, certified family home, or residential habilitation agency. ()
- h. The Department will not review an application of an applicant who has an action, either current or in process, against a certificate held by the applicant either in Idaho or any other state or jurisdiction. ()

02. Before Denial is Final. Before denial is final, the Department will advise the individual or provider in writing of the denial and his right and method to appeal. Contested case hearings, including denial and revocation, must be conducted under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

103. RENEWAL AND EXPIRATION OF CERTIFICATE.

An agency must request, through a Department-approved process, renewal of its certificate no less than ninety (90) days before the expiration date of the certificate, to ensure there is no lapse in certification. ()

01. Renewal of Certificate. A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ()

02. Expiration of Certificate Without Timely Request for Renewal. Expiration of a certificate without a timely request for renewal automatically rescinds the agency's certification to deliver services under these rules. ()

03. Availability of Certificate. The certificate must be available upon request by the Department, a participant, his guardian, and members of the public. ()

104. CERTIFICATE NOT TRANSFERABLE.

The certificate is issued only to the agency named in the application, only for the period specified, only for the location indicated in the application, and only to the owners or operators as expressed on the application submitted to the Department. The certificate may not be transferred or assigned to any other person or entity. The certificate is nontransferable from one (1) location to another. ()

105. RETURN OF CERTIFICATE.

The certificate is the property of the state and must be returned to the state if it is revoked or suspended or voluntarily closed. ()

106. CHANGE OF OWNERSHIP, ADMINISTRATOR, OR LOCATION.

01. Notification to Department. When a change of ownership, or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, or address is contemplated, the owner or designee must notify the Division of Licensing and Certification in writing through the Department-approved process. ()

02. New Application Required. In the instance of a change of ownership or lessee the new owner must submit a new application to the Department at least sixty (60) days prior to the proposed date of change. The new application must be submitted to the Division of Licensing and Certification through the Department-approved process and must contain the required information under Section 101.02 of these rules. ()

107. -- 199. (RESERVED)

200. AGENCY GOVERNING AUTHORITY.

Each agency must be organized and administered under one governing (1) authority. The governing authority may be a named individual or a number of individuals that will assume full legal responsibility for the overall conduct of the agency. ()

01. Structure. The agency must document an organizational chart that identifies the individuals acting as its governing authority, the administrator, the residential habilitation professional, and all other agency employees with administrative responsibilities. This organizational chart must be provided at the time of the application, updated at least annually or upon significant change to the agency's organizational structure, and available to the Department upon request. ()

02. Responsibilities. The governing authority must assume responsibility for: ()

a. Adopting appropriate organizational bylaws and policies and procedures; ()

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

c. Ensuring the agency administrator fulfills the duties and obligations outlined in Section 201 of these rules. Any failure on part of the Administrator is the ultimate responsibility of the agency and its governing body. ()

d. Conducting and documenting that it performed an annual review of the agency for compliance with these rules; ()

e. Developing and implementing written administrative policies and procedures that comply with applicable state and federal rules; and ()

f. Developing and implementing policies and procedures in accordance with these rules. All policies and procedures must be reviewed at least annually and revised as necessary. ()

201. AGENCY ADMINISTRATOR.

An administrator for an agency is accountable for the overall operations of the agency including ensuring compliance with these rules, overseeing and managing staff, and administering the agency's policies and procedures, and quality assurance program. ()

01. Administrator Qualifications. Each agency must employ a designated administrator who: ()

a. Is at least twenty-one (21) years of age; ()

b. Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and ()

c. Has a minimum of three (3) years of experience in service delivery with the population served with

at least one (1) year having been in an administrative role. ()

02. Absences. The administrator must designate, in writing, a qualified employee to perform the functions of the administrator to act in his absence. This document must be available upon request. ()

03. Responsibilities. The administrator must: ()

a. Document and review the overall program and general participant needs on at least a quarterly basis, or more often as necessary, to plan and implement appropriate strategies for meeting those needs; ()

b. Make all records available to the Department for review or audit; ()

c. Implement all policies addressing safety measures for the protection of participants and staff as mandated by state and federal rules; ()

d. Ensure agency personnel, including those providing services, practice within the scope of their certificate or license; ()

e. Conduct satisfaction surveys at least annually with each participant or guardian, as applicable. ()

f. Assure training, support services, and equipment for agency staff are provided to carry out assigned responsibilities; ()

g. Schedule coverage to assure compliance with the Plan of Service and Program Plans. Work schedules reflecting the daily adjustments of employees must be maintained to show the personnel on duty for the scheduled shift. The agency must specify provisions and procedures to assure back-up coverage for those work schedules; and ()

h. Coordinate with other service providers to assure continuity of the delivery of residential habilitation services in the plan of service. ()

202. QUALIFICATIONS AND RESPONSIBILITIES OF A RESIDENTIAL HABILITATION PROFESSIONAL.

01. Education and Experience. To be qualified as a residential habilitation professional, a person must: ()

a. Have at least one (1) year of experience professionally supervised with the population served; and ()

b. Meet the qualifications of a Qualified Intellectual Disabilities Professional (QIDP) as described in 42 CFR 483.430(a). ()

c. Experience writing and implementing behavior and skill training program plans; or ()

i. The agency must provide documentation the employee received such training from an experienced residential habilitation professional; and ()

ii. Demonstrate the ability to write and implement behavior and skill training program plans. ()

02. Criminal History and Background Check. A residential habilitation professional must have satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ()

03. First Aid and CPR Certification. A residential habilitation professional must be certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants he serves prior to providing direct service to participants and maintain current certification thereafter. ()

04. Responsibilities of a Residential Habilitation Professional. A residential habilitation professional must be employed by the agency on a continuous and regularly scheduled basis. A residential habilitation professional must perform the following: ()

a. Provide all skill training to agency direct service staff necessary to fulfill each participant's plan of service; ()

b. Complete or obtain an age appropriate functional assessment for participants served within thirty (30) days of initiation of the supported living service; ()

c. Develop participant program plans according to the current authorized plan of service for each participant; and ()

d. Supervise habilitation services of the agency at least quarterly or more often as necessary to include: ()

i. The review of direct services performed by direct service staff to ensure that staff are implementing the programs as written and demonstrate the necessary skills to correctly provide the services; and ()

ii. Monitoring participant progress and documenting changes when necessary to ensure revisions are made for progress, regression, or inability to maintain independence. ()

05. Direct Service Qualifications. If a residential habilitation professional is providing any type of direct service, he must meet the qualifications of direct service staff as defined in Section 203 of these rules. ()

203. DIRECT SERVICE STAFF.

Each direct service staff person for an agency must meet all of the following minimum qualifications: ()

01. Age. Be at least eighteen (18) years of age. ()

02. Education. Be a high school graduate, or have a GED or demonstrate the ability to provide services according to a plan of service. ()

03. First Aid and CPR Certification. Be certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants he serves prior to providing direct care or services to participants and maintain current certification thereafter. ()

04. Health. Have signed a statement maintained by the agency that he is free from communicable disease, understands universal precautions, and follows agency policies and procedures regarding communicable disease. ()

05. "Assistance with Medications" Course. Each staff person assisting with participant medications must successfully have completed and follow the "Assistance with Medications" course available through the Idaho Division of Career-Technical Education, or other Department-approved training. A copy of the certificate or other verification of successful completion must be maintained by the agency in the employee record. ()

06. Criminal History Check. Have satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ()

07. Documentation of Job Description. Have signed and received a copy of his job description from the agency stating that the requirements of his position have been explained. ()

08. Documentation of Training Requirements. Have documentation maintained by the agency showing he has met all training requirements as outlined in Section 204 of these rules. ()

204. DIRECT SERVICE STAFF TRAINING.

Each agency must ensure that all staff who provide direct services have completed training in accordance with these rules. ()

01. Training Documentation. ()

a. Training documentation must include the following: ()

i. Direct service staff receiving the training; ()

ii. Individual conducting the training; ()

iii. Name of the participant; ()

iv. Description of the content trained; and ()

v. Date and duration of the training. ()

b. Documentation of training must be available for review by the Department, and retained in each employee's record. ()

02. Orientation Training. Orientation training must be completed prior to working with participants. The orientation training must include: ()

a. Purpose and philosophy of services; ()

b. Policies and procedures; ()

c. Proper conduct in working with participants; ()

d. Handling of confidential and emergency situations that involve the participant; ()

e. Participant rights to include personal, civil, and human rights; ()

f. Universal Precautions; ()

g. Body mechanics and lifting techniques; ()

h. Housekeeping techniques; ()

i. Maintenance of a clean, safe, and healthy environment; and ()

j. Skills training specific to the needs of each participant served must be provided by a residential habilitation professional and include the following: ()

i. Instructional techniques including correct and consistent implementation of the participant's program plan or plan of care; ()

ii. Managing behaviors including techniques and strategies for teaching adaptive behaviors; and ()

iii. Accurate record keeping procedures. ()

03. Ongoing Training. The residential habilitation professional must provide and document ongoing training of direct service staff when changes are made to the participant's plan of service and corresponding program plans. Additionally, the agency will be responsible for providing on-going training to direct service staff when there are changes to the participant's physical, medical, and behavioral status. ()

205. -- 299. (RESERVED)

300. AGENCY POLICIES AND PROCEDURES.

A policy and procedure manual must be developed by the agency to effectively implement its objectives. It must be approved by the governing authority. The manual must, at a minimum, include policies and procedures reflecting the following: ()

01. Scope of Services and Area Served. The agency must define the scope of services offered and the geographic area served by the agency. ()

02. Acceptance Standards. The agency must develop and implement written policies and procedures that specify the agency will only accept and retain participants for whom the agency is adequately equipped to provide appropriate services according to the participant's plan of care. The agency will not accept or retain participants when the agency does not have the personnel appropriate in number and with appropriate knowledge and skill to provide the services needed by each participant according to each participant's plan of care. ()

03. Participant Records. Each agency must develop and implement written policies and procedures that describe the content, maintenance, and storage of participant records. Each agency must maintain accurate, current, and complete participant records. These records must be maintained for at least five (5) years following the participant's termination of services, or to the extent required by other federal or state requirements. Each agency must have a participant records system to include past and current information and to safeguard participant confidentiality under these rules. ()

04. Required Services. Each agency must develop and implement written policies and procedures that describe how the agency will assess and provide residential habilitation services. Residential habilitation services consist of an integrated array of individually tailored services and supports. These services and supports are designed to assist the participants to reside in their own homes. Residential habilitation includes habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity, and include training in one (1) or more of the following areas: ()

a. Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; ()

b. Money management, including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; ()

c. Daily living skills, including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; ()

d. Socialization, including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. ()

i. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. ()

ii. Socialization training does not include participation in non-therapeutic activities that are merely diversional or recreational in nature); ()

e. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; ()

f. Behavior shaping and management includes training and assistance in appropriate expressions of

emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. ()

g. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. ()

h. Skills training conducted by direct service staff to teach the participant how to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility, and other therapeutic programs. ()

05. Participant Safety. Each agency must develop and implement a policy and procedure for assessing participant environmental and structural safety risks. ()

06. Disaster/Emergency Care. Each agency must develop and implement emergency planning and care policies and procedures that include situational and environmental emergencies. The policy and procedure must include an emergency preparedness plan to follow in the event of an emergency. ()

07. Administrative Records. Each agency must maintain all administrative records, including all written policies and procedures, for at least five (5) years or to the extent necessary to meet any other federal or state requirements. Administrative records must include, at a minimum: ()

a. Administrative structure must include an organizational chart; ()

b. Legal authority must be identified in organizational bylaws and other documentation of legal authority of ownership; ()

c. Fiscal records must verify service delivery prior to request for payment. ()

08. Personnel. Each agency must develop and implement written personnel policies and procedures. The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees. Written personnel policies that describe the employee's rights, responsibilities, and agency's expectations must be on file and provided to employees. The record must contain documentation supporting staff qualifications. A record for each employee must be maintained from date of hire for not less than five (5) year(s) after the employee is no longer employed by the agency or as necessary to meet other requirements. ()

09. Participant Rights. Each agency must develop and implement written policies that include a clear definition of personal, civil, and human rights. Upon initiation of services, the agency must provide each participant or guardian, where applicable, with written and verbal information outlining participant rights. This information must be in easily understood terms. The policy and procedure must include the following rights: ()

a. Humane care and treatment; ()

b. Not be put in isolation; ()

c. Be free of restraints, unless necessary for the safety of that person or for the safety of others;()

d. Be free of mental and physical abuse; ()

e. Voice grievances and recommend changes in policies or services being offered; ()

f. Have the opportunity to participate in social, religious, and community activities of his choice; ()

g. Wear his own clothing and retain and use personal possessions; ()

- h.** Be informed of his habilitative condition, services available at the agency; ()
- i.** Reasonable access to all records concerning himself; ()
- j.** Refuse services; ()
- k.** Exercise all civil rights, unless limited by prior court order; ()
- l.** Privacy and confidentiality; ()
- m.** Receive courteous treatment; ()
- n.** Receive a response from the agency to any request made within (14) business days; ()
- o.** Receive services that enhance the participant's personal competencies and, whenever possible, promote inclusion in the community; ()
- p.** Refuse to perform services for the agency. If the participant is hired to perform services for the agency, the wage paid must be consistent with state and federal law; ()
- q.** Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; ()
- r.** All other rights established by law; and ()
- s.** Be protected from harm. ()
- 10. Health.** Each agency must develop and implement written policies and procedures that: ()
 - a.** Define how the agency will train each direct service staff on procedures to follow for communicable diseases or infected skin lesions; ()
 - b.** Describe how the agency will protect participants from exposure to individuals exhibiting symptoms of illness; ()
 - c.** Address any special medical or health care needs specific to each participant; and ()
 - d.** Implement medication standards and requirements in accordance with Section 302 of these rules. ()
- 11. Transportation.** Each agency must develop and implement transportation policies that include the following: ()
 - a.** Preventative Maintenance Program. Establish a preventive maintenance program, including vehicle inspections and other regular maintenance, for all agency-owned vehicles used to transport participants to ensure participant safety. ()
 - b.** Transportation Safety Policy. Develop and implement a written transportation safety policy. ()
 - c.** Licenses and Certifications for Drivers and Vehicles. Obtain and maintain licenses and certifications for drivers and vehicles required by public transportation laws, regulations, and ordinances that apply to the agency to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. ()
 - d.** Applicable Laws, Rules, and Regulations. Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. ()

e. **Liability Insurance.** Continuously maintain liability insurance that covers all passengers and meets the minimum liability insurance requirements under Idaho law. If an agency employee transports participants in the employee's personal vehicle, the agency must ensure that adequate liability insurance coverage is carried to cover those circumstances. ()

12. **Quality Assurance.** Each agency must develop and implement policies and procedures that describe the Purpose of the Quality Assurance Program that, at minimum, address the components of Section 405 of these rules. ()

13. **Grievance.** Each agency must develop and implement policies and procedures that describe the agencies methodology for accepting and responding to grievances presented by participants or their guardians.()

301. PERSONNEL RECORDS.

The record for each employee must contain at least the following: ()

01. **Name, Current Address, and Phone Number of the Employee;** ()

02. **Social Security Number;** ()

03. **Education and Experience;** ()

04. **Other Qualifications.** If licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate; ()

05. **Date of Employment;** ()

06. **Job Description.** Documentation that the employee signed and received a copy of his job description stating that the requirements of his position have been explained to him; ()

07. **Date of Termination of Employment and Reason for Termination, If Applicable;** ()

08. **Documentation of the Employee's Initial Orientation and Required Training;** ()

09. **Evidence of Current Age-Appropriate CPR and First Aid Certifications;** ()

10. **Current Assistance With Medications Certification, If Applicable; and** ()

11. **Criminal History Check.** Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ()

302. AGENCY MEDICATION STANDARDS AND REQUIREMENTS.

The agency must develop and implement written policy and procedures describing the program's system for handling participant medications that is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing." ()

01. **Medication Policy.** Each agency must develop written medication policies and procedures that outline in detail how the agency will ensure appropriate handling and safeguarding of medications. An agency that chooses to assist participants with medications to include PRN medications must also develop specific policies and procedures to ensure this assistance is safe and is delivered by qualified, fully-trained staff. Documentation of training must be maintained in the staff personnel record. ()

02. **Handling of Participant's Medication.** ()

a. The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately, unless in a Mediset, blister pack, or similar system. ()

b. Evidence of the written order for the medication from the physician or other practitioner of the

healing arts must be maintained in the participant's record. Medisets, blister pack, or similar system filled and labeled by a pharmacist or licensed nurse can serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use can also serve as written evidence of an order from the physician or other practitioner of the healing arts. ()

c. The agency is responsible to safeguard the participant's medications when assuming the responsibility for assisting with medications. ()

d. Medications that are expired or no longer used by the participant must not be retained by the agency or agency staff for longer than thirty (30) calendar days. ()

03. Self-Administration of Medication. When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a physician or other practitioner of the healing arts, or a licensed nurse has evaluated the participant's ability to self-administer medication and has found that the participant: ()

- a. Understands the purpose of the medication; ()
 - b. Knows the appropriate dosage and times to take the medication; ()
 - c. Understands expected effects, adverse reactions or side effects, and action to take in an emergency; ()
- and
- d. Is able to take the medication without assistance. ()

04. Assistance with Medication. An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place: ()

- a. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Division of Career-Technical Education, or other Department-approved training; ()
- b. The participant's health condition is stable; ()
- c. The participant's health status does not require nursing assessment, as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing," before receiving the medication or nursing assessment of the therapeutic or side effects after the medication is taken; ()
- d. The medication is in the original pharmacy-dispensed container with proper label and directions, or in an original over-the-counter container, or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; ()
- e. Written and oral instructions from a licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; ()
- f. Written instructions are in place that outline required documentation of assistance and who to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; ()
- g. Procedures for disposal or destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course or local medication destruction programs. ()

05. Administration of Medications. Only a licensed nurse or another licensed health professional working within the scope of his license may administer medications. Administration of medications must comply

with IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” ()

303. AGENCY POLICIES AND PROCEDURES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND MANAGEMENT OF MALADAPTIVE BEHAVIOR.

Each agency must develop and implement written policies and procedures that address the development of participants’ social skills and management of maladaptive behavior. These policies and procedures must include statements that address: ()

01. Adaptive and Maladaptive Behavior. The agency must address possible underlying causes or function of a behavior and identify what the participant may be attempting to communicate by the behavior. ()

02. Behavior Intervention. Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. Interventions must address the following: ()

a. Social Skills Development. Focus on developing or increasing participants’ social skills. ()

b. Prevention Strategies. Ensure and document the use of positive approaches to increase social skills and decrease maladaptive behavior while using least restrictive alternatives and consistent, proactive responses to behaviors. ()

c. Behavior replacement. Ensure that programs to assist participants with managing maladaptive behavior include teaching of alternative adaptive skills to replace the maladaptive behavior. ()

d. Protected Rights. Ensure the safety, welfare, and human and civil rights of participants are adequately protected. ()

e. Objectives and Programs. Ensure that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior, and any other behaviors that significantly interfere with participants’ independence or ability to participate in the community. Ensure that reinforcement selection is individualized and appropriate to the task and not contraindicated for medical reasons. ()

f. Participant Involvement. Ensure programs developed by the agency involve the participants, to the best of their ability, in developing the plan to increase social skills and to manage maladaptive behavior. ()

g. Written Informed Consent. Ensure programs developed by an agency to assist participants with managing maladaptive behaviors are conducted only with the written informed consent of the participant, or legal guardian, where applicable. When programs used by the agency are developed by another service provider the agency must obtain a copy of the informed consent. ()

h. Review and Approval. Programs developed by an agency to manage maladaptive behavior are implemented after the review and written approval of the residential habilitation professional. If the program contains restrictive or aversive components, an individual working within the scope of his license or certification must also review and approve, in writing, the program prior to implementation. When programs implemented by the agency are developed by another service provider, the agency must obtain a copy of these reviews and approvals. ()

03. Appropriate Use of Interventions. Employees of the agency must not use physical, verbal, sexual, or psychological abuse, or punishment. For the purposes of these rules, punishment is any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration, or probability of the occurrence of a behavior; or, the administration of any noxious or unpleasant stimulus or deprivation of a participant’s rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. Employees of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet. The agency must ensure that interventions used to manage participants’ maladaptive behavior are never used: ()

a. For disciplinary purposes; ()

- b. For the convenience of staff; ()
- c. As a substitute for a needed training program; or ()
- d. By untrained or unqualified staff. ()

04. Use of Restraint on Participants. No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: ()

a. Chemical restraint. A chemical restraint is any medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition. Employees or contractors of the agency must not use chemical restraint unless authorized by an attending physician. ()

b. Mechanical restraint. A mechanical restraint is a device that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. ()

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

ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant or guardian if applicable, his team and a qualified residential habilitation professional. Informed participant consent is required. ()

c. Physical restraint. ()

i. Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented and reviewed in the participant's record by the direct service staff and the residential habilitation professional. ()

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant or his guardian if applicable, his team and a qualified residential habilitation professional. Informed participant consent is required. ()

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant or his guardian if applicable, his team, and a qualified residential habilitation professional. Informed participant consent is required. ()

304. -- 399. (RESERVED)

400. AGENCY PARTICIPANT RECORD REQUIREMENTS.

Each agency certified under these rules must maintain accurate, current, and complete participant and administrative records. Each participant record must clearly document the date, time, duration, and type of service, and include the signature of the individual providing the service, for each service provided. Each participant record must contain the following information: ()

01. Profile Sheet. Each participant record must include a profile sheet containing the following: ()

a. Name, current address, and current phone number of the participant; ()

b. Medicaid ID number; ()

c. Gender and marital status; ()

d. Date of birth; ()

- e.** Names, addresses, and current phone numbers of legal guardian if applicable, family, advocates, friends, and persons to be contacted in case of an emergency; ()
- f.** Names, addresses, and current phone number of physician, pharmacy, dentist, and other health care providers as applicable; ()
- g.** A list, or an attached list, of current medications, diet, and all other treatments prescribed for the participant; and ()
- h.** Current diagnoses or reference to a current history and physical. ()
- 02. Authorized Plan of Service.** The agency must obtain a current authorized plan of service from the paying entity. ()
- 03. Participant Rights.** Each agency must document upon initiation of services, that each participant and his guardian, where applicable, have been informed of his rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This information must be provided in easily understood terms both verbally and in writing. ()
- 04. History and Physical.** Results of a most current history and physical. ()
- 05. Functional Assessment.** An age-appropriate functional assessment must be completed or obtained by the agency within thirty (30) days of the initiation of the supported living service. The functional assessment must be used for the development of program plans and include: ()
- a.** An assessment reflecting the person's functional abilities in the following areas: self-direction, money management, daily living skills, socialization, mobility, behavior shaping, and other therapeutic programs; and ()
- b.** The results and summary signed with credentials and dated by the qualified residential habilitation professional. ()
- 06. Psychological or Psychiatric Assessment.** When a participant has had a psychological or psychiatric assessment for the purpose of treatment, the results of the assessment must be maintained in the participant's record and used when developing program objectives. ()
- 07. Program Plan.** Each participant must have a program plan that includes goals and objectives specific to his authorized residential habilitation program. Program plans that include participant's name, baseline statement, measurable objectives, start date, written instructions to staff, service environments, and target date. ()
- 08. Record of Significant Incidents, Accidents, Illnesses, and Treatments.** ()
- 09. Daily Medication Log, When Applicable.** ()
- 10. Daily Record of the Date, Time, Duration, and Type of Service Provided.** ()
- 11. Service Delivery and Progress Notes.** Documentation of service delivery and progress notes that correspond with the program plans when services are delivered to the participant. ()
- 12. Status Review.** Residential habilitation agencies must review each participant's progress to ensure revisions are made for progress, regression, or inability to maintain independence. The review of progress must be documented on a status review document. The status review document identifies the participant's progress toward goals defined in the plan of service. ()
- 13. Termination Procedures.** The agency must develop and implement termination policies and procedures that address how the agency will ensure safety of the participant and community to the extent possible in the event that emergency conditions exist or the participant no longer in need of or desires services. ()

a. In the instance where the participant is no longer in need of or desires services, the agency must ensure that the procedures include written notice of no less than thirty (30) days for termination and include a transition plan. For the purposes of this chapter, a transition plan is an interim plan developed by the agency defining activities to assist the participant to transition out of residential habilitation services from that agency. ()

b. Services may be terminated prior to thirty (30) days if both parties agree in writing to the termination conditions. The agency may not terminate services when to do so would pose a threat of endangerment to the participant or others. The participant is entitled to appeal the termination utilizing the agencies grievance process. ()

c. The agency must notify the participant or his guardian no less than thirty (30) days prior to a change of ownership in order to have informed choice in the services they receive. ()

401. -- 402. (RESERVED)

403. PARTICIPANT FINANCES.

01. Written Policy and Procedure. Each agency must develop and implement a written policy and procedure that describes the management of participant funds. In order for an agency to manage participant's funds, they must have written designation as a payee by either Social Security Administration or the participant's guardian or conservator if they are not a recipient of Social Security funds. ()

02. Participant's Personal Finance Records. When the agency, or its employees or contractors, are designated as the payee on behalf of the participants, the agency must establish and maintain an accounting system that assures a full and complete accounting of participants' personal funds entrusted to the agency, its employees, or contractors on behalf of participants. Records of financial transactions must be sufficient to allow a thorough audit of the participant's funds. An agency that manages participant funds must: ()

a. Not commingle of participant funds with agency funds. Borrowing between participant accounts is prohibited; ()

b. Document any financial transactions. A separate transaction record must be maintained for each participant; ()

c. Restore funds to the participant if the agency cannot produce proper accounting records of participant's funds or property; and ()

d. Provide access to the participant's funds to the participant or his legal guardian or conservator. ()

404. AGENCY REPORTING AND COMMUNICATION REQUIREMENTS.

Each agency must develop and implement written policies and procedures outlining how the agency will document reporting and other communications for the following: ()

01. Reciprocal Communication. Communication with the legal guardian and other authorized individuals; and ()

02. Reporting Requirements. Any agency employee or contractor must report all incidents and allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5304, Idaho Code, or the designated state protection and advocacy system for persons with developmental disabilities when applicable; and ()

a. The agency administrator must investigate and document in the participant's records his investigation of all alleged violations. The agency must protect the participant from the possibility of abuse while the investigation is in progress. The administrator must ensure the events and the agency response to the events are

documented in the participant record. ()

b. If the agency administrator verifies the alleged violation, appropriate corrective action must be taken and reported to law enforcement, the Department, and adult protection as required by law under Section 39-5304, Idaho Code. ()

03. Participant's Condition. The agency administrator must notify the participant's legal guardian within twenty-four (24) hours, if one exists, of any significant incidents, or changes in participant's condition including serious illness, accident, death, or abuse. ()

04. Notification to Department of a Participant's Condition. Through a Department-approved process, the agency administrator must notify the Department by the close of the next business day of any significant incidents including: death, hospitalization, or if the participant is arrested or incarcerated. The Department will investigate or cause to be investigated any such incident that indicates there was a violation of the rules or statute. ()

405. AGENCY QUALITY ASSURANCE PROGRAM.
Each agency must develop and implement a quality assurance program. ()

01. What the Quality Assurance Program Verifies. The quality assurance program is an ongoing, proactive, internal review of the agency designed to verify: ()

a. Services are provided in accordance with these rules; ()

b. Sufficient staff are available to meet the needs of each person served; ()

c. Skill training activities are conducted as written in the program plans. ()

d. The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. ()

02. Quality Assurance Program Components. Each agency's written quality assurance program must include: ()

a. Goals and procedures to be implemented to achieve the purpose of the quality assurance program; ()

b. Person, discipline, or department responsible for each goal; ()

c. A system to ensure the correction of problems identified within a specified period of time; ()

d. A method for assessing participant satisfaction at least annually including minimum criteria for participant response and alternate methods to gather information if minimum criteria is not met; ()

e. An annual review of agency's policy and procedure manual signed and dated by the administrator that specifies content of revisions made; and ()

f. An annual review of participant and employee records for complete and current content to meet rules. ()

406. COMPLAINTS AND INVESTIGATIONS.

01. Filing a Complaint. Any person who believes that the agency has failed to meet any provision of the rules or statute may file a complaint with the Department. All complaints must have a basis in rule or statutory requirements. In the event that it does not, the complainant will be referred to the appropriate entity or agency. ()

02. Investigation Survey. The Department will investigate, or cause to be investigated the following: ()

- a. Any complaint alleging a violation of the rules or statute; and ()
- b. Any reportable incident which indicates there was a violation of the rules or statute. ()
- 03. Disclosure of Complaint Information.** The Department will not disclose the name or identifying characteristics of a complainant unless: ()
 - a. The complainant consents in writing to the disclosure; ()
 - b. The investigation results in a judicial proceeding and disclosure is ordered by the court; or ()
 - c. The disclosure is essential to prosecution of a violation. The complainant is given the opportunity to withdraw the complaint before disclosure. ()
- 04. Method of Investigation.** The nature of the complaint will determine the method used to investigate the complaint. ()
- 05. Statement of Deficiencies.** If violations of these rules are identified, depending on the severity, the Department may send the agency a statement of deficiencies. ()
- 06. Public Disclosure.** Information received by the Department through filed reports, inspection, or as otherwise authorized under the law, must not be disclosed publicly in such a manner as to identify individual residents except in a proceeding involving a question of certification. ()
- 07. List of Deficiencies.** A current list of deficiencies including plans of correction will be available to the public upon request to the agency or by written request to the Department. ()
- 08. Notification to Complainant.** The Department will inform the complainant of the results of the investigation survey when the complainant has provided a name and address. ()
- 407. -- 499. (RESERVED)**
- 500. ENFORCEMENT PROCESS.**
The Department may impose a remedy or remedies when it determines an agency is not in compliance with these rules. ()
 - 01. Determination of Remedy.** In determining which remedy or remedies to impose, the Department will consider the agency's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, the Department may impose any of the remedies in Subsection 500.02 of this rule, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. ()
 - 02. Enforcement Remedies.** If the Department determines that an agency is out of compliance with these rules, it may impose any of the following remedies according to Section 500.01 of this rule. ()
 - a. Require the agency to submit a plan of correction that must be approved in writing by the Department; ()
 - b. Issue a provisional certificate with a specific date for correcting deficient practices; ()
 - c. Ban enrollment of all participants with specified diagnoses; ()
 - d. Ban any new enrollment of participants; ()
 - e. Revoke the agency's certificate; or ()

f. Summarily suspend the certificate and transfer participants. ()

03. Immediate Jeopardy. If the Department finds an agency's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the agency's certificate. ()

04. No Immediate Jeopardy. If the Department finds that the agency's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 500.02.a. through 500.02.e. of this rule. ()

05. Repeat Deficiencies. If the Department finds a repeat deficiency in an agency, it may impose any of the remedies listed in Subsection 500.02 of this rule as warranted. The Department may monitor the agency on an "as needed" basis, until the agency has demonstrated to the Department's satisfaction that it is in compliance with requirements governing residential habilitation agencies and that it is likely to remain in compliance. ()

06. Failure to Comply. The Department may impose one (1) or more of the remedies specified in Subsection 500.02 of this rule if: ()

a. The agency has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or ()

b. The agency has failed to correct the deficiencies stated in the agency's accepted plan of correction and as verified by the Department, via resurveys. ()

501. REVOCATION OF CERTIFICATE.

01. Revocation of the Agency's Certificate. The Department may revoke an agency's certificate when persuaded by the preponderance of the evidence that the agency is not in substantial compliance with the requirements in this chapter of rules. ()

02. Causes for Revocation of the Certificate. The Department may revoke any agency's certificate for any of the following causes: ()

a. The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; ()

b. Conditions exist in the agency that endanger the health or safety of any participant; ()

c. Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; ()

d. The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; ()

e. The agency has failed to comply with any of the conditions of a provisional certificate; ()

f. The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; ()

g. An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules; ()

h. Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code; ()

i. The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency; ()

j. The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Subsection 300.09 of these rules; or ()

k. The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. ()

502. NOTICE OF ENFORCEMENT REMEDY.

The Department will notify the following of the imposition of any enforcement remedy on an agency: ()

01. Notice to the Agency. The Department will notify the agency in writing, transmitted in a manner that will reasonably ensure timely receipt. ()

02. Notice to Public. The Department will notify the public by sending the agency printed notices to post. The agency must post all the notices on their premises in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. ()

03. Notice to the Professional Licensing Boards. The Department will notify professional licensing boards, as appropriate. ()

503. -- 509. (RESERVED)

510. EMERGENCY POWERS OF THE DIRECTOR.

In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing. ()

511. INJUNCTION TO PREVENT OPERATION WITHOUT CERTIFICATE.

Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an agency without a certificate required under this chapter. For the purposes of these rules, a governmental unit is the state, or any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. ()

512. -- 599. (RESERVED)

600. WAIVERS.

Waivers to these rules may be granted by the Department as needed provided that granting the waiver does not endanger the health or safety or rights of any participant. The decision to grant a waiver is not precedent or given any force or effect of law in any other proceeding. Any waiver granted by the Department may be renewed annually if sufficient written justification is presented to the Department. Waivers granted by the Department must be given in writing and signed by the Department's Licensing and Certification program manager. ()

601. -- 999. (RESERVED)