



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

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

FROM: Elizabeth Bowen - Senior Legislative Research Analyst

DATE: December 07, 2017

SUBJECT: Temporary Rule

IDAPA 16.03.01 - Eligibility for Health Care Assistance for Families and Children - Adoption of Pending and Temporary Rule - Docket No. 16-0301-1701

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Adoption of Pending and Temporary Rule - Docket No. 16-0310-1706

IDAPA 16.07.37 - Children's Mental Health Services - Adoption of Pending Rule and Temporary Rule - Docket No. 16-0737-1701

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Elizabeth Bowen at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.01 – ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2018. The pending rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code; and House Bill 43 (2017).

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule:

As part of the Jeff D settlement agreement and the adoption of HB 43 (2017) that is directly related to it, the Department has created the Youth Empowerment Services (YES) Medicaid program that will provide medical assistance and respite care services to youth diagnosed with Serious Emotional Disturbance (SED). The Division of Welfare will be determining the non-financial and financial eligibility components of the program. This rule change adds guidance around the eligibility criteria that a participant must meet to be eligible for services under the YES program. This is a companion rule to Docket Nos. 16-0310-1706, 16-0318-1701, and 16-0737-1701 publishing in this Bulletin.

Corrections were made to the citations to IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” to reflect the amendments to the pending rule made to Docket No. 16-0310-1706.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice and includes changes made to the pending rule. The text of the pending rule has been modified in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the October 4, 2017, Idaho Administrative Bulletin, [Vol. 17-10, pages 231 and 232](#).

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 in the form of new services. These new services are being called Youth Empowerment Services (YES), and several other chapters of rules are implementing changes with the same effective date of January 1, 2018, to meet the intent of the law and the court-ordered settlement agreement.

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 for this rulemaking to the State General Fund, or any other funds as eligibility will be determined for this program in conjunction with already existing Medicaid programs through the automated eligibility system.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending and temporary rule, contact Camille Schiller at (208) 334-5969.

DATED this 3rd day of November, 2017.

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DOCKET NO. 16-0301-1701 - ADOPTION OF PENDING AND TEMPORARY RULE

Substantive changes have been made to the pending rule.
Italicized red text that is double underscored is new text that has been added to the pending rule.

The text of the proposed rule was published in the Idaho Administrative Bulletin,
Volume 17-10, October 4, 2014, pages 231 through 232.

This rule has been adopted as a pending rule by the Agency and is now awaiting
review and final approval by the 2018 Idaho State Legislature.

Additionally, this rule has been adopted as a temporary rule and is effective January 1, 2018.

Pursuant to Section 67-5226, Idaho Code, the full text of
the temporary rule is being published in this Bulletin.

THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE AND TEMPORARY RULE
FOR DOCKET NO. 16-0301-1701

540. YOUTH EMPOWERMENT SERVICES (YES) PROGRAM CHILDREN.

01. Payments for Children Under Eighteen (18) Years of Age with SED. In accordance with Section 56-254(2), Idaho Code, the Department will make payments for medical assistance for a child under eighteen (18) years of age with serious emotional disturbance (SED), as defined in Section 16-2403, Idaho Code, and verified by an independent assessment: (1-1-18)T

a. Whose family income does not exceed three hundred percent (300%) of the federal poverty guideline (FPG) as determined using MAGI-based eligibility standards; and (1-1-18)T

b. Who meets other eligibility standards in accordance with the rules of the Department. (1-1-18)T

02. Youth Empowerment Services (YES) Benefits. Applicants whose family income is equal to or less three hundred percent (300%) of the Federal Poverty Guidelines (FPG) for children zero (0) to eighteen (18) years of age and who meet the non-financial eligibility criteria in Sections 200 through 299 of these rules may receive the following benefits: (1-1-18)T

a. Youth Empowerment Services (YES) State Plan option services and supports described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 635 through 638; and (1-1-18)T

b. Additional covered services set forth in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 075 through 799. (1-1-18)T

03. Additional Eligibility Criteria and Program Requirements for YES. Additional eligibility criteria and program requirements applicable to the Youth Empowerment Services (YES) State Plan option are described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 635 through 638. (1-1-18)T

540~~1~~. -- 544. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1706

NOTICE OF RULEMAKING – ADOPTION OF PENDING AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2018. The pending rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-264, and 56-1610, Idaho Code; House Bill 43 (2017); and Section 1915(i) of the Social Security Act (42 U.S.C. 1396n).

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule:

As part of the Jeff D settlement agreement and the adoption of HB 43 (2017) which is directly related to it, the Department has created the Youth Empowerment Services (YES) program for children with Serious Emotional Disturbance (SED). The YES program will provide medical and behavioral health assistance to this target population, including respite care. These rule changes are needed so that the Department can provide these services to YES Program participants in accordance with the Jeff D settlement agreement.

This rulemaking adds new sections of rules to administer services and supports to be delivered under 1915(i) authority as a Medicaid state plan option. This will include the service of respite care. (Section 1915(i) of the Social Security Act gives states the option to offer home and community-based services (HCBS), previously available only through a 1915(c) Home and Community Based Services (HCBS) waiver, through the state's Medicaid state plan.)

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Changes have been made to both the pending and temporary rule that adds children with SED and the YES program under the Home and Community Based Services program. The complete text of the proposed rule was published in the October 4, 2017, Idaho Administrative Bulletin, [Vol. 17-10, pages 296-298](#).

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 in the form of new services. These new services are being called Youth Empowerment Services (YES), and several other chapters of rules are implementing changes with the same effective date of January 1, 2018, to meet the intent of the law and the court-ordered settlement agreement.

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 costs for the Youth Empowerment Services (YES) program were originally estimated in the fiscal note for House Bill 43 (2017) and funding was addressed in House Bill 313 (2017).

A revised version of this fiscal note is presented in the following paragraph.

This rulemaking will have no impact to the State General Fund, but will have a federal fund spending authority impact of \$2,968,400 in the Division of Medicaid for the last 6 months of SFY 2018. The Division of Behavioral Health's Children's Mental Health program reverted \$1,181,600 General Fund for services that do not draw a federal match in SFY 2018 under House Bill 313. The Division of Medicaid will leverage matching federal funds through Federal Medical Assistance Percentage (FMAP) funding. In future years, as additional services are implemented as required by the lawsuit settlement agreement, there is an anticipated annual ongoing cost of \$8,300,000 (\$2,363,200 General Fund/\$5,936,800 federal funds).

In addition to the above fiscal impact, Rule Docket 16-0318-1701 in the 2018 legislative session is bringing forward sliding scale premiums for participants with income levels above 150% of the Federal Poverty Guidelines, as directed under HB 313 in the 2017 legislative session. It is anticipated that revenue generated through premium collections will also contribute to offsetting the fiscal impact of the implementation of these services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending and temporary rule, contact Clay Lord at (208) 364-1979.

DATED this 3rd day of November, 2017.

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DOCKET NO. 16-0310-1706 - ADOPTION OF PENDING AND TEMPORARY RULE

Substantive changes have been made to the pending rule.
Italicized red text that is ***double underscored*** is new text that has been added to the pending rule.

The text of the proposed rule was published in the Idaho Administrative Bulletin,
Volume 17-10, October 4, 2014, pages 296 through 298.

This rule has been adopted as a pending rule by the Agency and is now awaiting
review and final approval by the 2018 Idaho State Legislature.

Additionally, this rule has been adopted as a temporary rule and is effective January 1, 2018.

Pursuant to Section 67-5226, Idaho Code, the full text of
the temporary rule is being published in this Bulletin.

THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE AND TEMPORARY RULE
FOR DOCKET NO. 16-0310-1706

SUB AREA: HOME AND COMMUNITY BASED SERVICES
(Sections 310 - 317)

310. HOME AND COMMUNITY BASED SERVICES.

Home and Community Based Services (HCBS) are those long-term services and supports that assist eligible participants to remain in their home and community. The federal authorities under 42 CFR 441.301, 42 CFR 441.710, and 42 CFR 441.725 require the state to deliver HCBS in accordance with the rules described in Sections 310 through

318 of these rules. HCBS include the following: (7-1-16)

01. Children’s Developmental Disability Services. Children’s developmental disability services as defined in Sections 663 and 683 of these rules. (7-1-16)

02. Adult Developmental Disability Services. Adult developmental disability services as defined in Sections 645 through 659, 703, and 705 of these rules. (7-1-16)

03. Consumer-Directed Services. Consumer-directed services as defined in IDAPA 16.03.13, “Consumer-Directed Services.” (7-1-16)

04. Aged and Disabled Waiver Services. Aged and disabled waiver services as defined in Section 326 of these rules. (7-1-16)

05. Personal Care Services. Personal care services as defined in Section 303 of these rules. (7-1-16)

06. Services for Children with Serious Emotional Disturbance (SED). Services for children with serious emotional disturbance (SED) who are participants in the Youth Empowerment Services (YES) Program as defined in Section 638 of these rules. (1-1-18)T

(BREAK IN CONTINUITY OF SECTIONS)

634. ~~644.~~ (RESERVED)

YOUTH EMPOWERMENT SERVICES (YES) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN OPTION (Sections 635-638)

635. YOUTH EMPOWERMENT SERVICES (YES) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN OPTION.

Home and community-based services are provided through the HCBS State Plan option, as allowed in Section 1915(i) of the Social Security Act, for children who are YES program participants. HCBS state plan option services must be delivered in accordance with Sections 635 through 638 of these rules. (1-1-18)T

636. YOUTH EMPOWERMENT SERVICES (YES) HCBS STATE PLAN OPTION: DEFINITIONS.

For the purposes of Sections 635 through 638 of these rules, the following terms are used as defined below. (1-1-18)T

01. Idaho Behavioral Health Plan (IBHP). The Idaho Behavioral Health Plan is defined in IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” Section 011. (1-1-18)T

02. Independent Assessment. A comprehensive clinical diagnostic assessment and a Department-approved assessment tool to identify the child’s needs, strengths, and degree of functional impairment, administered by a Department-designated independent assessor. The assessment process also includes the following activities: (1-1-18)T

a. Evaluation of the child’s current behavioral health, living situation, relationships, and family functioning; (1-1-18)T

b. Contacts, as necessary, with significant individuals such as family and teachers; and (1-1-18)T

c. A review of information regarding the child’s clinical, educational, social, and behavioral health, and juvenile/criminal justice history. (1-1-18)T

03. Person-centered Service Plan. The person-centered service plan identifies the participant's physical and behavioral health services and supports needs. The person-centered service plan must be reviewed and updated by the Department or its designated representative at least every twelve (12) months, upon the participant's request, when new services are needed, or when there is a significant change in the participant's condition. (1-1-18)T

04. Serious Emotional Disturbance (SED). The term "serious emotional disturbance" is defined in Section 16-2403, Idaho Code. (1-1-18)T

05. YES Program Participant. A YES program participant is an Idaho resident under eighteen (18) years of age with a serious emotional disturbance as determined by an independent assessment. (1-1-18)T

637. YOUTH EMPOWERMENT SERVICES (YES) HCBS STATE PLAN OPTION: ELIGIBILITY REDETERMINATION. YES program participant eligibility must be redetermined by an independent assessment every twelve (12) months. The Department may extend participant eligibility to allow for redetermination if the independent assessment is unavoidably delayed. (1-1-18)T

638. YOUTH EMPOWERMENT SERVICES (YES) HCBS STATE PLAN OPTION: COVERAGE AND LIMITATIONS. The following services are covered for YES participants: (1-1-18)T

01. Respite Care. Respite care provides supervision to the participant on an intermittent or short-term basis because of the need for relief of the primary unpaid caregiver of a YES program participant. Respite care is available in response to a family emergency or crisis, or may be used on a regular basis to provide relief to the caregiver. Payment and administration of respite care services will be done through the IBHP and will be established by the Department in the IBHP contract. (1-1-18)T

02. Person-Centered Planning. A person-centered planning team, comprised of the participant, family members, and other support persons significant to the participant, will direct the development of the person-centered service plan through a process approved by the Department. The process will include support necessary to enable the participant and his family to make informed choices and decisions concerning the person-centered service plan. (1-1-18)T

639. -- 644. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.37 – CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2018. The pending rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, 56-1004A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule.

These pending and temporary rules remove tables that provide reimbursement amounts for foster care, and add references to IDAPA 16.06.01, "Child and Family Services," that provide payments to alternate care providers. Also, changes were made for class members covered by a court-ordered settlement agreement for grievances and expedited hearings.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. There are no changes to the pending rule and it is being adopted as originally proposed. The original text of the proposed rule was published in the (October 4, 2017, Idaho Administrative Bulletin, [Vol. 17-10, pages 329-331](#)).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason:

Changes to these rules confer a benefit to the individuals who are covered under the Jeff D Settlement agreement that needs to be in place January 1, 2018.

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:

The fiscal impact for these rule changes are meant to be cost-neutral. Items being removed or amended in this chapter are covered under other rules and have no fiscal impact to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule or temporary rule, contact Treena Clark at (208) 334-6611.

DATED this 3rd day of November, 2017.

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DOCKET NO. 16-0737-1701 - ADOPTION OF PENDING AND TEMPORARY RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 17-10, October 1, 2017, pages 329 through 331.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2018 Idaho State Legislature.

Additionally, this rule has been adopted as a temporary rule and is effective January 1, 2018.

Pursuant to Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin.

003. ADMINISTRATIVE APPEALS.

01. **Appeal from a Denial Based on Eligibility Criteria.** Administrative appeals from a denial of children's mental health services based on the eligibility criteria under Section 107 of these rules are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-17)

02. **Grievances and Expedited Hearings.** Grievances and expedited hearings related to non-Medicaid Youth Empowerment Services (YES) will be provided as described in IDAPA 16.05.03 "Rules Governing Contested Case Proceeding and Declaratory Ruling." Sections 750 and 751. (1-1-18)T

023. **Appeal of Decision Based on Clinical Judgment.** All decisions involving clinical judgment, which may include the category of services, the particular provider of services, or the duration of services, are reserved to the Department, and are not subject to appeal, administratively or otherwise, in accordance with Maresh v. State, 132 Idaho 221, 970 P.2d 14 (Idaho 1999). (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

283. PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.

Monthly payments for care provided by family alternate care providers: are paid according to IDAPA 16.06.01, "Child and Family Services."

<i>Family Alternate Care Payments—Table 283</i>			
<i>Ages</i>	<i>0-5</i>	<i>6-12</i>	<i>13-18</i>
<i>Monthly Room and Board</i>	<i>\$329</i>	<i>\$366</i>	<i>\$487</i>

(7-1-17)(1-1-18)T

01. **Gifts.** ~~At a~~ Additional thirty dollars (\$30) payments for Christmas gifts and ~~twenty dollars (\$20) for~~ birthday gifts will be paid in the appropriate months. (5-8-09)(1-1-18)T

02. **Clothing.** Costs for clothing will be paid, based upon the Department's determination of each

child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (5-8-09)

03. School Fees. School fees due upon enrollment will be paid directly to the school or to the foster parents, based upon the Department's determination of the child's needs. (5-8-09)

284. ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.

For those children who, as determined by the Department, require additional care above room, board, shelter, daily supervision, school supplies, and personal incidentals, the Department may pay the family alternate care provider an additional amount to that paid ~~under Section 283 of these rules.~~ according to IDAPA 16.06.01, "Child and Family Services." The family alternate care rate is based upon a continuous ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. *Additional payment will be made as follows:*

<i>Additional Family Alternate Care Payments – Table 284</i>		
<i>Lowest Level of Need</i>	<i>Moderate Level of Need</i>	<i>Highest Level of Need</i>
<i>\$90 per month</i>	<i>\$150 per month</i>	<i>\$240 per month</i>

~~(7-1-17)~~(1-1-18)T

01. Lowest Level of Need. ~~Ninety dollars (\$90) per month for a~~ Δ child requiring a mild degree of care for documented conditions ~~including~~ receives the lowest level of additional payments for the following: ~~(5-8-09)~~(1-1-18)T

- a. Chronic medical problems; (5-8-09)
- b. Frequent, time-consuming transportation needs; (5-8-09)
- c. Behaviors requiring extra supervision and control; and (5-8-09)
- d. Need for preparation for independent living. (5-8-09)

02. Moderate Level of Need. ~~One hundred fifty dollars (\$150) per month for a~~ Δ child requiring a moderate degree of care for documented conditions ~~including~~ receives the moderate level of additional payments for the following: ~~(5-8-09)~~(1-1-18)T

- a. Ongoing major medical problems; (5-8-09)
- b. Behaviors that require immediate action or control; and (5-8-09)
- c. Alcohol or other substance use disorder. (5-8-09)

03. Highest Level of Need. ~~Two hundred forty dollars (\$240) per month for a~~ Δ child requiring an extraordinary degree of care for documented conditions ~~including~~ receives the highest level of additional payments for the following: ~~(5-8-09)~~(1-1-18)T

- a. Serious emotional or behavioral disorder that requires continuous supervision; (5-8-09)
- b. Severe developmental disability; and (5-8-09)
- c. Severe physical disability such as quadriplegia. (5-8-09)

04. Reportable Income. Additional payments for more than ten (10) qualified children received during any calendar year must be reported as income to the Internal Revenue Service. (5-8-09)