

Dear Senators MARTIN, Souza, Jordan, and
Representatives WOOD, Wagoner, Chew:

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

IDAPA 16.03.07 - Home Health Agencies - Proposed Rule (Docket No. 16-0307-2001);

IDAPA 16.03.21 - Developmental Disabilities Agencies (DDA) - Proposed Rule (Docket No.
16-0321-2001);

IDAPA 16.04.17 - Residential Habilitation Agencies - Proposed Rule (Docket No. 16-0417-2001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/06/2020. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/04/2020.

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

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



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: Principal Legislative Drafting Attorney - Elizabeth Bowen

DATE: October 20, 2020

SUBJECT: Department of Health and Welfare

IDAPA 16.03.07 - Home Health Agencies - Proposed Rule (Docket No. 16-0307-2001)

IDAPA 16.03.21 - Developmental Disabilities Agencies (DDA) - Proposed Rule (Docket No. 16-0321-2001)

IDAPA 16.04.17 - Residential Habilitation Agencies - Proposed Rule (Docket No. 16-0417-2001)

Summary and Stated Reasons for the Rule

Pursuant to the Governor's Executive Order 2020-13, these proposed rules remove unnecessary or duplicative language. In addition, Docket No. 16-0307-2001 defines the term "licensed independent practitioner," which replaces other terminology throughout the rule for the purpose of aligning the rule with federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted due to the nature of the rule changes, which were to comply with the executive order. The rules do not have any anticipated negative fiscal impact.

Statutory Authority

These rule changes appear to be within the Department's statutory authority.

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

*** PLEASE NOTE ***

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

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.07 – HOME HEALTH AGENCIES

DOCKET NO. 16-0307-2001

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 39-2401(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

The Governor's [Executive Order 2020-13](#) resulted in agencies reviewing temporarily waived rules that can be eliminated. These changes removing elements from Subsections 010, 022.02.d-f, 030.4-7, and 031.03, will align state licensure with Federal regulations (CARES Act, section 3708) allowing Licensed Independent Practitioners to order home health services and follow patients.

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

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

There is no anticipated fiscal impact to state or general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes reduce the regulatory burden for providers.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Debby Ransom at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2020.

Dated this 23rd day of July, 2020.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0307-2001
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

- 01. Abuse.** Any conduct as a result of which (a person) suffers skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence. (Idaho Code, Title 39, Chapter 5202(2)). (7-1-93)
- 02. Administrator.** The person appointed by the governing body delegated the responsibility for managing the (HHA). (3-20-20)
- 03. Audiologist.** A person who is licensed by the Idaho Bureau of Occupational Licenses to provide audiology services. (3-20-20)
- 04. Audit.** A methodical examination and review. (12-31-91)
- 05. Board.** The Idaho State Board of Health and Welfare. (12-31-91)
- 06. Branch Office.** A location from which a HHA provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the HHA and must be sufficiently close to the parent agency that it is not impractical for it to receive administration, supervision and services from the parent agency. The branch office is not required to independently meet the requirements for licensure. (7-1-93)
- 07. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-93)
- 08. Patient.** An individual who is a recipient of provided health care services. (3-20-20)
- 09. Clinical Note.** A notation of a contact with or regarding a patient that is written and dated by a member of the health team. (7-1-93)
- 10. Clinical Record.** A legal document containing all pertinent information relating to a patient. (7-1-93)
- 11. Complaint Investigation.** An investigation by an agency to determine the validity of an allegation against it. (3-20-20)
- 12. Complaint Survey.** On-site inspection conducted by the Department to investigate an allegation against an agency. (7-1-93)
- 13. Deficiency.** A determination of noncompliance with a specific rule or part of a rule. (7-1-93)
- 14. Department.** The Idaho Department of Health and Welfare. (7-1-93)
- 15. Directly.** Providing home health services either through salaried employees or through personnel under hourly or per visit contracts. (7-1-93)
- 16. Director.** A physician or licensed registered nurse responsible for general supervision, coordination, and direction of patient care in an HHA. (3-20-20)

17. **Follow-Up Survey.** A survey made to determine if corrections have been made to deficiencies cited in an earlier survey. Areas surveyed are determined by the nature of the deficiencies cited during the previous survey although new deficiencies may be cited in any area. (7-1-93)

18. **Governing Body.** The designated person or persons who assume full responsibility for the conduct and operation of the HHA. (3-20-20)

19. **Government Unit.** The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-93)

20. **Grievance Procedure.** A method to ensure patient rights by receiving, investigating, resolving, and documenting complaints related to the provision of services of the HHA. (3-20-20)

21. **Group of Professional Personnel.** A group which includes, at least, one (1) physician, at least, one (1) licensed registered nurse, and other health professionals representing at least the scope of the program, agency staff, and others. (7-1-93)

22. **Health Care Services.** Any of the following services that are provided at the residence of an individual: (7-1-93)

- a. Skilled nursing services; (7-1-93)
- b. Homemaker/home health aide services; (7-1-93)
- c. Physical therapy services; (7-1-93)
- d. Occupational therapy services; (7-1-93)
- e. Speech therapy services; (7-1-93)
- f. Nutritional Services/Registered Dietitian Services; (7-1-93)
- g. Respiratory therapy services; (7-1-93)
- h. Medical/social services; (7-1-93)
- i. Intravenous therapy services; and (7-1-93)
- j. Such other services as may be authorized by rule of the Board. (7-1-93)

23. **Home Health Agency (HHA).** Any business entity that primarily provides skilled nursing services by licensed nurses and at least one (1) other health care service as defined in Subsection 010.22 to a patient in that patient's place of residence. Any entity that has a provider agreement with the Department as a personal assistance agency under Title 39, Chapter 56, Idaho Code, requires licensure as an HHA only if it primarily provides nursing services. (3-20-20)

24. **Homemaker/Home Health Aide.** A person who has successfully completed a basic prescribed course or its equivalent. (3-20-20)

25. **Individual.** A natural person who is a recipient of provided health care services. (7-1-93)

26. Licensed Independent Practitioner (LIP). A person who is: ()

a. A licensed physician or physician assistant under Section 54-1803, Idaho Code; or ()

b. A licensed advance practice registered nurse or Certified Nurse Specialist under Section 54-1402.

Idaho Code.

()

- 267.** **Licensed Practical Nurse.** A person who is duly licensed pursuant to Title 54, Chapter 14 of the Idaho Code. (7-1-93)
- 278.** **Licensing Agency.** The Department of Health and Welfare. (12-31-91)
- 289.** **Medical Equipment and Supplies.** Items, which due to their therapeutic or diagnostic characteristics, are essential to provide patient care. (7-1-93)
- 2930.** **Neglect.** The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person. {Idaho Code, Title 39, Chapter 5302 (8)}. (7-1-93)
- 301.** **Occupational Therapist.** A person licensed by the Idaho Bureau of Occupational Licenses to provide occupational therapy services. (3-20-20)
- 312.** **Occupational Therapy Assistant.** A person certified by the Idaho Bureau of Occupational Licenses to provide occupational therapy services under the supervision of an occupational therapist. (3-20-20)
- 323.** **Parent Unit.** The part of the HHA which develops and maintains administrative and professional control of branch offices. Services are provided by the parent unit. (3-20-20)
- 334.** **Physical Therapist.** A person licensed by the Idaho Bureau of Occupational Licenses to provide physical therapy services. (3-20-20)
- 345.** **Physical Therapy Assistant.** A person certified by the Idaho Bureau of Occupational Licenses to provide physical therapy services under the supervision of a physical therapist. (3-20-20)
- 356.** **Physician.** Any person licensed as required by Title 54, Chapter 18, of the Idaho Code. (7-1-93)
- 367.** **Place of Residence.** Wherever a patient makes their home. This may be a dwelling, an apartment, a relative's home, a residential care facility, a retirement center, or some other type of institution exclusive of licensed facilities which provide skilled nursing care. (7-1-93)
- 378.** **Progress Note.** A written notation, dated and signed by a member of the health team, that documents facts about the patient's assessment, care provided, and the patient's response during a given period of time. (7-1-93)
- 389.** **Registered Dietitian.** A person who is licensed by the Idaho Board of Medicine as a registered dietitian. (3-20-20)
- 3940.** **Licensed Registered Nurse (RN).** A person who is duly licensed pursuant to Title 54, Chapter 14 of the Idaho Code. (7-1-93)
- 401.** **Regulation.** A requirement established by state, federal, or local governments pursuant to law and having the effect of law. (7-1-93)
- 412.** **Respiratory Therapist.** A person who is duly licensed by the Idaho Board of Medicine. (3-20-20)
- 423.** **Skilled Nursing Services.** Those services provided directly by a licensed nurse for the purpose of promoting, maintaining, or restoring the health of an individual or to minimize the effects of injury, illness, or disability. (7-1-93)
- 434.** **Social Services.** Those services provided by a person currently licensed by the Bureau of Occupational Licenses as a social worker in the state of Idaho. (12-31-91)
- 445.** **Speech Therapist.** A person who is licensed by the Idaho Bureau of Occupational Licenses to

provide speech, hearing, and communication services. (3-20-20)

456. Summary of Care Report. The compilation of the pertinent factors of a patient's clinical and progress notes that is submitted to the patient's ~~physician~~ licensed independent practitioner. (7-1-93)()

467. Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. (7-1-93)

478. Under Arrangement. Furnishing home health services through contractual or affiliation arrangements with other agencies, organizations or persons. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

020. ADMINISTRATION - GOVERNING BODY.

01. Scope. The HHA must be organized under a governing body, which assumes full legal responsibility for the conduct of the agency. (3-20-20)

02. Structure. The administrative responsibilities of the agency must be documented by means of a current organizational chart. (7-1-93)

03. Responsibilities. The governing body must assume responsibility for: (7-1-93)

a. Adopting appropriate bylaws and policies and procedures. (7-1-93)

b. Appointing the group of professional personnel. (3-20-20)

c. Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written goals and objectives and applicable state and federal laws. The administrator participates in deliberation and policy decisions concerning all services. (7-1-93)

d. Providing a continuing and annual program of overall agency evaluation. (11-19-76)

e. Assuring that appropriate space requirements, support services, and equipment for staff to carry out assigned responsibilities. (11-19-76)

f. Assuring that an agency having one or more branches providing service and located in a geographic area which varies from a centralized administrative area, provides, on a regular basis, supervision and guidance relating to all activities so as to maintain the entire agency on an equitable basis. (7-1-93)

g. Assuring that branches are held to the same standards and policies as the parent organization. Services offered by branches are specified in writing. Branches do not need to offer the same services as the parent agency. (7-1-93)

h. Seeking and promoting sources of reimbursement for home health services which will provide for the patient's economic protection. (7-1-93)

i. Cooperating in establishing a system by which to coordinate and provide continuity of care within the community served. (11-19-76)

j. Assuring that services will be provided directly or under arrangement with another person, agency or organization. Overall administrative and supervisory responsibility for services provided under arrangement rests with HHA. The HHA ensures that legal ~~physician~~ licensed independent practitioner's orders are carried out regardless of whether the service is provided directly or under arrangement. The HHA and its staff, including staff services under arrangement, must operate and furnish services in accordance with all applicable federal, state, and local laws. (3-20-20)()

04. Patients' Rights. Ensure that patients' rights are recognized and must include as a minimum the following: (3-20-20)

a. Home health providers have an obligation to protect and promote the exercise of these rights. The governing body of the agency must ensure patients' rights are recognized. (3-20-20)

b. A patient has a right to be informed of his rights and has a right to be notified in writing of his rights and obligations before treatment is begun. HHAs must provide each patient and family with a written copy of the bill of rights. A signed, dated copy of the patient's bill of rights will be included in the patient's medical record. (7-1-93)

c. A patient has the right to exercise his rights as a patient of the HHA. A patient's family or guardian may exercise a patient's rights when a patient has been judged incompetent. (7-1-93)

d. A patient's rights must include at a minimum the following: (7-1-93)

i. A patient has the right to courteous and respectful treatment, privacy, and freedom from abuse and neglect. (7-1-93)

ii. A patient has the right to be free from discrimination because of race, creed, color, sex, national origin, sexual orientation, and diagnosis. (7-1-93)

iii. A patient has the right to have his property treated with respect. (7-1-93)

iv. A patient has the right to confidentiality with regard to information about his health, social and financial circumstances and about what takes place in his home. (7-1-93)

v. The HHA will only release information about a patient as required by law or authorized by a patient. (7-1-93)

vi. A patient has the right to access information in his own record upon written request within two (2) working days. (7-1-93)

vii. A patient has the right to voice grievances regarding treatment or care that is or fails to be furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the HHA and must not be subjected to discrimination or reprisal for doing so. (7-1-93)

viii. The HHA investigates complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient's property by anyone furnishing services on behalf of the HHA and documents both the existence of the complaint and the resolution of the complaint. (7-1-93)

ix. A patient has the right to be advised of the availability of the toll-free HHA hotline in the state. When the agency accepts a patient for treatment or care, the HHA advises the patient in writing of the telephone number of the home health hotline established by the state, the hours of its operation and that the purpose of the hotline is to receive complaints or questions about local HHAs. (7-1-93)

x. A patient has the right to be informed of the HHA's right to refuse admission to, or discharge any patient whose environment, refusal of treatment, or other factors prevent the HHA from providing safe care. (7-1-93)

xi. A patient has the right to be informed of all services offered by the agency prior to, or upon admission to the agency. (7-1-93)

xii. A patient has the right to be informed of his condition in order to make decisions regarding his home health care. (7-1-93)

xiii. Upon admission, the HHA provides written and oral information to all adult patients regarding The

Natural Death Act (Idaho Code, Title 39, Chapter 45). The agency maintains documentation showing that it has complied with this requirement whether or not the patient has executed an advance directive (“Living Will” and/or “Durable Power of Attorney for Health Care”). (7-1-93)

xiv. An agency cannot condition the provision of care or otherwise discriminate against a patient based on whether or not the patient has executed an advance directive. (7-1-93)

xv. If the agency cannot comply with the patient’s “Living Will” and/or “Durable Power of Attorney for Health Care” as a matter of conscience, the agency will assist the patient in transferring to an agency that can comply. (7-1-93)

xvi. The HHA advises a patient, in advance, of the disciplines that will furnish, care, and frequency of visits proposed to be furnished. (7-1-93)

xvii. The HHA advises a patient in advance of any change in the plan of care before the change is made. (7-1-93)

xviii. A patient has the right to participate in the development of the plan of care, treatment, and discharge planning. The HHA advises the patient in advance of the right to participate in planning the care or treatment. (7-1-93)

xix. A patient has the right to be informed prior to any care provided by the agency which has experimental or research aspects. The patient’s or the patient’s legal guardian’s written consent is required. (7-1-93)

xx. A patient has the right to refuse services or treatment. (7-1-93)

xxi. Before the care is initiated, the HHA must inform a patient orally and in writing of the following: (7-1-93)

(1) The extent to which payment may be expected from third party payors; and (7-1-93)

(2) The charges for services that will not be covered by third party payors; and (7-1-93)

(3) The charges that the patient may have to pay; and (7-1-93)

(4) The HHA informs a patient orally and in writing of any changes in these charges as soon as possible, but no later than thirty (30) days from the date the HHA provider becomes aware of the change. (7-1-93)

xxii. A patient has the right to have access, upon request, to all bills for service he has received regardless of whether they are paid by him or by another party. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

022. DIRECTOR.

01. Qualifications. General supervision, coordination, and direction of the medical, nursing, and other services provided are the responsibility of a physician or licensed registered nurse. The physician or licensed registered nurse or their designee, who must be a physician or licensed registered nurse, must be available at all times during operating hours and must participate in all activities relative to the professional or other services provided, including the qualifications of personnel as related to their assigned duties. (11-19-76)

02. Responsibilities. The director or designee must be responsible for assuring that: (11-19-76)

a. An initial assessment/evaluation is made to provide a data base to plan and initiate care of the patient; (11-19-76)

- b. There is a plan of treatment established for each patient; (7-1-93)
- c. Continuing assessment and evaluation is provided in accordance with the patient's response and progress as related to the course of his disease or illness and the plan of treatment; (11-19-76)
- d. The initial plan of treatment and subsequent changes are approved by signature of the attending ~~physician~~ **licensed independent practitioner** and carried out according to his direction. ~~(11-19-76)~~()
- e. The total plan of treatment is reviewed by the attending ~~physician~~ **licensed independent practitioner** as often as the severity of the patient's condition requires and is reviewed at least every sixty (60) days; ~~(5-3-03)~~()
- f. Information is available to the attending ~~physician~~ **licensed independent practitioner** on an ongoing basis and is timely, accurate, and significant of change in clinical status or condition; ~~(11-19-76)~~()
- g. Information is provided to the administrator and guidance requested as is necessary to carry out assigned duties. (11-19-76)

(BREAK IN CONTINUITY OF SECTIONS)

030. PLAN OF CARE.

Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's plan of care. (7-1-93)

- 01. Written Plan of Care.** A written plan of care must be developed and implemented for each patient by all disciplines providing services for that patient. Care follows the written plan of care and includes: (7-1-93)
 - a. All pertinent diagnoses; (7-1-93)
 - b. The patient's mental status; (7-1-93)
 - c. Types of services and equipment required; (7-1-93)
 - d. Frequency of visits; (7-1-93)
 - e. Functional limitations; (7-1-93)
 - f. Ability to perform basic activities of daily living; (7-1-93)
 - g. Activities permitted; (7-1-93)
 - h. Nutritional requirements; (7-1-93)
 - i. Medication and treatment orders; (7-1-93)
 - j. Any safety measures to protect against injury; (7-1-93)
 - k. Any environmental factors that may affect the agency's ability to provide safe, effective care; (7-1-93)
 - l. The family's or other caregiver's ability to provide care; (7-1-93)
 - m. The patient and his family's teaching needs; (7-1-93)

- n. Planning for discharge; and (7-1-93)
- o. Other appropriate items. (7-1-93)
- 02. Goals of Patient Care.** The goals of patient care must be expressed in behavioral terms that provide measurable indices for performance. (7-1-93)
- 03. Orders for Therapy Services.** Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration. (7-1-93)
- 04. Initial Plan of Care.** The initial plan of care and subsequent changes to the plan of care are approved by a *doctor of medicine, osteopathy, or podiatric medicine* licensed independent practitioner. (7-1-93)()
- 05. Total Plan of Care.** The total plan of care is reviewed by the attending *physician* licensed independent practitioner and HHA personnel as often as the severity of the patient's condition requires but at least once every sixty (60) days. (5-3-03)()
- 06. Changes to Plan.** Agency professional staff promptly alert the *physician* licensed independent practitioner to any changes that suggest a need to alter the plan of care. (7-1-93)()
- 07. Drugs and Treatments.** Drugs and treatments are administered by agency staff only as ordered by the *physician* licensed independent practitioner. The nurse or therapist immediately records and signs oral orders and obtains the physician's countersignature. Agency staff check all medications a patient may be taking to identify possible ineffective side effects, the need for laboratory monitoring of drug levels, drug allergies, and contraindicated medication and promptly report any problems to the *physician* licensed independent practitioner. (7-1-93)()

031. CLINICAL RECORDS.

- 01. Purpose.** A clinical record containing past and current findings, in accordance with accepted professional standards, is maintained for every patient receiving home health services. (7-1-93)
- 02. Contents.** Clinical records must include: (7-1-93)
 - a. Appropriate identifying information; (7-1-93)
 - b. Assessments by appropriate personnel; (7-1-93)
 - c. The plan(s) of care; (7-1-93)
 - d. Name of physician and other providers involved in the patient's care; (3-20-20)
 - e. Drug, dietary treatment, and activity orders; (7-1-93)
 - f. Signed and dated clinical and progress notes; (7-1-93)
 - g. Copies of summary reports sent to the attending physician; (7-1-93)
 - h. Signed patient release or consent forms where indicated; (11-19-76)
 - i. A signed dated copy of the patient's bill of rights; (7-1-93)
 - j. Copies of transfer information sent with the patient; and (7-1-93)
 - k. A discharge summary. (7-1-93)
- 03. Clinical and Progress Notes, and Summaries of Care.** Clinical and progress notes must be

written or dictated on the day service is rendered and incorporated into the clinical record within seven (7) days. Summaries of care reports must be submitted to the attending ~~physician~~ licensed independent practitioner at least every sixty (60) days. ~~(5-3-03)~~()

04. Written Policies and Procedures. Written policies and procedures must ensure that clinical records are legibly written in ink suitable for photocopying and are available and retrievable during operating hours either in the agency or by electronic means. (7-1-93)

05. Retention Period. Clinical records must be retained for five (5) years after the date of discharge, or in the case of a minor, three (3) years after the patient becomes of age. Policies provide for retention even if the HHA discontinues operations. Records must be protected from damage. (7-1-93)

06. Disposal of Records. There must be a method of disposal of clinical records, assuring prevention of retrieval and subsequent use of information. (7-1-93)

07. Copies of Records. There must be a means of submitting a copy of the clinical record or an abstract and copy of most recent summary report with the patient in the event of patient transfer to another agency or health care facility. (7-1-93)

08. Safeguarding and Protection of the Record. Agencies must ensure that records are protected from unauthorized use and damage and adhere to written procedures governing use and removal of records and conditions for release of information unless authorized by law. (7-1-93)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.21 – DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

DOCKET NO. 16-0321-2001

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, and under the authority of Executive Order 2020-13.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

The Governor's [Executive Order 2020-13](#) directed agencies to review temporarily waived rules to identify those that can be permanently removed. With the changes to telehealth, removing elements from Subsection 400.03 enables developmental disabilities agencies flexibility in supervision of direct care staff. The amendments to text under Section 410 reduce unnecessary training requirements that are addressed in other rules within the chapter.

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

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

There is no anticipated fiscal impact to state or general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to comply with Executive Order 2020-13.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact 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 September 23, 2020.

Dated this 23rd day of July, 2020.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0321-2001
(Only Those Sections With Amendments Are Shown.)

STAFFING REQUIREMENTS AND PROVIDER QUALIFICATIONS
(Sections 400-499)

400. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.

Each DDA is accountable for all operations, policy, procedures, and service elements of the agency. (7-1-11)

01. Agency Administrator Duties. The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. (7-1-11)

02. Agency Administrator Qualifications. An agency administrator must have two (2) years of supervisory or management experience in a developmental disabilities services setting. (7-1-11)

03. Clinical Supervisor Duties. A clinical supervisor must be employed by the DDA on a continuous and regularly scheduled basis and be readily available *on-site* to provide for: (7-1-11)()

a. The supervision of service elements of the agency, including *face-to-face* supervision of agency staff providing direct care services; and (7-1-11)()

b. The ~~observation and~~ review of the direct services performed by all paraprofessional and professional staff on at least a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the DDA services. (7-1-11)()

04. Clinical Supervisor Qualifications. A person qualified to act as clinical supervisor of a DDA must meet the following requirements: (7-1-11)

a. Hold at least a bachelor's degree in a human services field from a nationally accredited university or college; and (7-1-11)

b. Provide documentation of one (1) year's supervised experience working with the population served; and (7-1-11)

c. Demonstrate competencies related to the requirements to provide intervention services as required by the Department; and (7-1-11)

d. Complete additional coursework as required by the Department; or (7-1-11)

e. Individuals working as Developmental Specialists or as Intensive Behavioral Interventionists prior to July 1, 2011, are qualified to provide clinical supervision until June 30, 2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013, to maintain their certification. (7-1-11)

f. The agency administrator and clinical supervisor can be the same individual. (7-1-11)

05. Limitations. If an agency administrator or a clinical supervisor also works as a professional delivering direct services, the agency must have policies and procedures demonstrating how the agency will continue to meet agency staffing requirements in Subsections 400.01 through 400.04 of this rule. (7-1-11)

06. Professionals. The agency must ensure that staff providing intervention services have the

appropriate licensure or certification required to provide services. A person qualified to provide intervention services must also meet the following minimum requirements: (7-1-11)

- a. Hold at least a bachelor's degree in a human services field from a nationally accredited university or college; (7-1-11)
- b. Provide documentation of one (1) year's supervised experience working with participants with developmental disabilities; (7-1-11)
- c. Demonstrate competencies related to the requirements to provide intervention services as required by the Department; and (7-1-11)
- d. Complete a supervised practicum and additional coursework as required by the Department; or (7-1-11)
- e. Individuals working as Developmental Specialists or as Intensive Behavioral Interventionists prior to July 1, 2011, are qualified to provide intervention services until June 30, 2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013, to maintain their certification. (7-1-11)

07. Paraprofessionals. A person qualified to provide support services must meet the following minimum requirements: (7-1-11)

- a. Meet the qualifications prescribed for the type of services to be rendered; (7-1-11)
- b. Have received instructions in the needs of the participant who will be provided the service; and (7-1-11)
- c. Demonstrate the ability to provide services according to a plan of service. (7-1-11)

08. Records of Licenses or Certifications. The agency must maintain documentation of the staff qualifications, including copies of applicable licenses and certificates. (7-1-11)

09. Parent or Legal Guardian of Participant. A DDA may not hire the parent or legal guardian of a participant to provide services to the parent's or legal guardian's child. (7-1-11)

401. -- 409. (RESERVED)

410. GENERAL TRAINING REQUIREMENTS FOR DDA STAFF.

Each DDA must ensure that all training of staff specific to service delivery to the participant is completed as follows: (7-1-11)

01. Yearly Training. The DDA must ensure that staff or volunteers who provide DDA services complete a minimum of twelve (12) hours of formal training each calendar year. Each agency staff providing services to participants must: (7-1-11)

- a. Participate in fire and safety training upon employment and annually thereafter; and (7-1-11)
- b. Be certified in CPR and first aid within ninety (90) days of hire and maintain current certification thereafter; and (7-1-11)
 - i. The agency must ensure that CPR and first-aid trained staff are present or accompany participants when services or DDA-sponsored activities are being provided. (7-1-11)
 - ii. Each agency staff person must have age appropriate CPR and first aid certification for the participants they serve. (7-1-11)

- c. Be trained to meet any special health or medical requirements of the participants they serve. (7-1-11)
- 02. Sufficient Training.** Training of all staff must include the following as applicable to their work assignments and responsibilities: (7-1-11)
- ~~a. Optimal independence of all participants is encouraged, supported, and reinforced through appropriate activities, opportunities, and training; (7-1-11)~~
- b.a.** Correct and appropriate use of assistive technology used by participants; (7-1-11)
- b.b.** Accurate record keeping and data collection procedures; (7-1-11)
- ~~d. Adequate observation, review, and monitoring of staff, volunteer, and participant performance to promote the achievement of participant goals and objectives; (7-1-11)~~
- b.c.** Participant’s rights, advocacy resources, confidentiality, safety, and welfare; and (7-1-11)
- b.d.** The proper implementation of all policies and procedures developed by the agency. (7-1-11)
- 03. Additional Training for Professionals.** Training of all professional staff must include the following as applicable to their work assignments and responsibilities: (7-1-11)
- a.** Correct and consistent implementation of all participants' individual program plans and implementation plans, to achieve individual objectives; (7-1-11)
- b.** Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques. (7-1-11)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.04.17 – RESIDENTIAL HABILITATION AGENCIES

DOCKET NO. 16-0417-2001

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code, and under Section 56-1003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

The Governor's [Executive Order 2020-13](#) resulted in agencies reviewing temporarily waived rules that can be eliminated. These changes removing elements from Subsections 203.07-08, 204.02.a, 204.02.f, 204.02.h, and 204.j.iii will remove unnecessary duplication in the rule chapter.

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

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

There is no anticipated fiscal impact to state or general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes remove duplicative language.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact 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 September 23, 2020.

Dated this 23rd day of July, 2020.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0417-2001
(Only Those Sections With Amendments Are Shown.)

203. DIRECT SERVICE STAFF.

Each direct service staff person for an agency must meet all of the following minimum qualifications: (7-1-18)

- 01. Age.** Be at least eighteen (18) years of age. (7-1-18)
- 02. Education.** Be a high school graduate, or have a GED or demonstrate the ability to provide services according to a plan of service. (7-1-18)
- 03. First Aid and CPR Certification.** Be certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants they serve prior to providing direct care or services to participants and maintain current certification thereafter. (7-1-18)
- 04. Health.** Have signed a statement maintained by the agency that they are free from communicable disease, understands universal precautions, and follows agency policies and procedures regarding communicable disease. (7-1-18)
- 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. (7-1-18)
- 06. Criminal History Check.** Have satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” (7-1-18)

~~**07. Documentation of Job Description.** Have signed and received a copy of their job description from the agency stating that the requirements of their position have been explained. (7-1-18)~~

~~**08. Documentation of Training Requirements.** Have documentation maintained by the agency showing they have met all training requirements as outlined in Section 204 of these rules. (7-1-18)~~

204. DIRECT SERVICE STAFF TRAINING.

Each agency must ensure that all staff who provide direct services have completed training in accordance with these rules. (7-1-18)

- 01. Training Documentation.** (7-1-18)
 - a.** Training documentation must include the following: (7-1-18)
 - i.** Direct service staff receiving the training; (7-1-18)
 - ii.** Individual conducting the training; (7-1-18)
 - iii.** Name of the participant; (7-1-18)
 - iv.** Description of the content trained; and (7-1-18)
 - v.** Date and duration of the training. (7-1-18)
 - b.** Documentation of training must be available for review by the Department, and retained in each employee’s record. (7-1-18)

02. Orientation Training. Orientation training must be completed prior to working with participants. The orientation training must include: (7-1-18)

- ~~a. Purpose and philosophy of services; (7-1-18)~~
- ba.** Policies and procedures; (7-1-18)
- eb.** Proper conduct in working with participants; (7-1-18)
- dc.** Handling of confidential and emergency situations that involve the participant; (7-1-18)
- ed.** Participant rights to include personal, civil, and human rights; (7-1-18)
- ~~f. Universal Precautions; (7-1-18)~~
- ge.** Body mechanics and lifting techniques; (7-1-18)
- ~~h. Housekeeping techniques; (7-1-18)~~
- if.** Maintenance of a clean, safe, and healthy environment; and (7-1-18)

fg. Skills training specific to the needs of each participant served must be provided by a residential habilitation professional and include the following: (7-1-18)

- i. Instructional techniques including correct and consistent implementation of the participant's program plan or plan of care; **and** ~~(7-1-18)()~~
- ii. Managing behaviors including techniques and strategies for teaching adaptive behaviors; ~~and~~ ~~(7-1-18)()~~
- ~~iii. Accurate record keeping procedures. (7-1-18)~~

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. (7-1-18)