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Idaho State Legislature

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MEMORANDUM

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

FROM: Elizabeth Bowen - Principal Legislative Drafting Attorney

DATE: January 08, 2020

SUBJECT: Temporary Rule

IDAPA 16.03.18 - Medicaid Cost-Sharing - Adoption of Pending and Temporary Rule - Docket No. 16-0318-1901

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) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.18 – MEDICAID COST-SHARING

DOCKET NO. 16-0318-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2020. The pending rule has been adopted by the agency and is now pending review by the 2020 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.

Upon legislative approval of this pending rule the amendments made in this docket will overwrite those sections of the reauthorized rule promulgated under Docket No. 16-0000-1900F, which will also be filed for review for final approval during the upcoming legislative session.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-253 and 56-257, Idaho Code, and Title XIX and Title XXI of the Social Security Act.

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. No changes have been made to the pending rule that differs from the proposed rule text.

This rulemaking aligns the Personal Needs Allowance (PNA) for all HCBS participants regardless of marital status. This alignment also allows the Department to reduce the PNA table from six (6) categories of eligibility down to two (2). The final determination of this rule change will align the PNA for all participants without a rent or mortgage expense to 100% of the Federal SSI benefit.

Additionally, we need to add a subsection that details that Native Americans and Medicaid Workers with Disabilities (MWD) are exempt from this share of cost requirement. 42 CFR 447.56 prohibits states from collecting share of cost from Tribal participants and MWD participants. This update is necessary to help align this chapter with other rule chapters, CFR, and clarify existing practice. While this is an addition to this rule, it also provides a clarification to this chapter that has been a source of confusion for participants and providers of HCBS services.

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 2, 2019, Idaho Administrative Bulletin, [Vol. 19-10, pages 159 through 162](#).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b) Compliance with deadlines in amendments to governing law or federal programs, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The Centers for Medicare and Medicaid Services (CMS) identified that Idaho is not in compliance with the reasonableness requirements described at 42 CFR 435.726(c)(i).

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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:

Aligning the Personal Needs allowance (PNA) to 100% of SSI Federal benefit results in a net impact of an ongoing savings of \$46,606.20 (approximately \$32,624.34 Federal dollars and \$13,981.86 State dollars) per year due to a reduction in Medicaid claims expenditures. The change will result in Share of Cost increasing for a small number of participants (191 members in State Fiscal Year 2018 and approximately 30 members as of August 5, 2019) receiving Home and Community Based Services, which will decrease the amount of dollars paid in Medicaid claims.

Funding sources: Aligning the PNA to 100% of SSI Federal benefit results in a net impact of an ongoing savings of \$46,606.20 (approximately \$32,624.34 Federal dollars and \$13,981.86 State dollars per year due to a reduction in Medicaid claims expenditures.

Automated Systems: There is no fiscal impact associated with changes to automated systems, the Idaho Benefit Eligibility System (IBES). Necessary changes will be incorporated into routine business operations and required annual updates will be made.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact Jennifer Pinkerton, (208) 287-1171.

Dated this 14th day of November, 2019.

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DOCKET NO. 16-0318-1901 - ADOPTION OF PENDING AND TEMPORARY RULE

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

**Amendments made to the proposed rule are published in this pending rule in *red italicized text*.
Previously made amendments are shown in **red plain text (non-italicized)**.**

025. PARTICIPANTS EXEMPT FROM COST-SHARING.

Native American and Alaskan Native participants are exempt from the cost-sharing provisions of Sections 200, 205, 215, 320, and 400 of these rules. The participant must declare his race to the Department to receive this exemption. **Participants in the Medicaid Workers with Disabilities (MWD) program are exempt from the cost-sharing provisions of Sections 200, 205, 207, and 400 of these rules.** (1-1-20)T

(BREAK IN CONTINUITY OF SECTIONS)

215. PREMIUMS FOR PARTICIPATION IN MEDICAID ENHANCED PLAN.

01. Workers with Disabilities. A participant in the Medicaid for Workers with Disabilities coverage group must share in the cost of Medicaid coverage, if required. Countable income is determined under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." A participant's premium for his share of Medicaid costs under this coverage group is determined in Subsections 215.02 through 215.04 of this rule. (3-19-07)

a. A participant who has countable income at or below one hundred thirty-three percent (133%) of the current federal poverty guideline is not required to pay a premium for Medicaid. (1-1-20)T

b. A participant who has countable income above one hundred thirty-three percent (133%) to two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium of ten dollars (\$10) to the Department. (1-1-20)T

c. A participant who has countable income in excess of two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium to the Department. The amount due is the greater of ten dollars (\$10); or seven and one-half percent (7.5%) of the participant's income above two hundred fifty percent (250%) of the current federal poverty guideline. (1-1-20)T

02. Recomputed Premium Amount. Premium amounts are recomputed when changes to a participant's countable income result in a different percentage premium calculation as determined in Subsections 215.02 through 215.04 of this rule, and at the annual re-determination. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

400. PARTICIPATION IN THE COST OF HOME AND COMMUNITY-BASED WAIVER SERVICES. Medicaid participants required to participate in the cost of Home and Community-Based Waiver (HCBS) services as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," must have their share of cost determined as described in Subsections 400.01 through 400.10 of this rule. (3-19-07)

01. Excluded Income. Income excluded under the provisions of IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Sections 723 and 725, is excluded in determining participation. (3-19-07)

02. Base Participation. Base participation is income available for participation after subtracting all allowable deductions, except for the incurred medical expense deduction in Subsection 400.07 of this rule. Base participation is calculated by the participant's Self Reliance Specialist. The incurred medical expense deduction is calculated by the **Division of Welfare**. (1-1-20)T

03. Community Spouse. Except for the elderly or physically disabled participant's personal needs allowance, base participation for a participant with a community spouse is calculated under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 725. A community spouse is the spouse of an HCBS participant who is not an HCBS participant and is not institutionalized. The HCBS personal needs allowance for a participant living in adult residential care equals the federal Supplemental Security Income (SSI) benefit rate for an individual living independently. (3-19-07)

04. Home and Community Based Services (HCBS) Spouse. Except for the elderly or physically disabled participant's personal needs allowance (PNA), base participation for a participant with an HCBS spouse is calculated and specified under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 723. An HCBS spouse is the spouse of a participant who also receives HCBS. (3-19-07)

05. Personal Needs Allowance. The participant's personal needs allowance depends on **whether the participant has a** legal obligation to pay rent or mortgage. The participant's personal needs allowance is deducted from **any countable** income after income exclusions and before other allowable deductions. To determine the amount of the personal needs allowance, use Table 400.05 of this rule:

TABLE 400.05 - PERSONAL NEEDS ALLOWANCE	
Amount of Personal Needs Allowance (PNA) for Participation	
Not Responsible for Rent or Mortgage	Responsible for Rent or Mortgage
One hundred percent (100%) of the federal SSI benefit for a person with no spouse	One hundred and eighty percent (180%) of the Federal SSI benefit for a person with no spouse

(1-1-20)T

06. Developmentally Disabled Participants. These allowances are specified in IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD).” The HCBS personal needs allowance for adult participants receiving waiver services under the Developmentally Disabled Waiver is three (3) times the federal SSI benefit amount to an individual in his own home. (3-19-07)

07. Incurred Medical Expenses. Amounts for certain limited medical or remedial services not covered by the Idaho Medicaid Plan and not paid by a third party may be deducted from the base participation amount. The Department must determine whether a participant’s incurred expenses for such limited services meet the criteria for deduction. The participant must report such expenses and provide verification in order for an expense to be considered for deduction. Costs for over-the-counter medications are included in the personal needs allowance and will not be considered a medical expense. Deductions for necessary medical or remedial expenses approved by the Department will be deducted at application, and changed, as necessary, based on changes reported to the Department by the participant. (3-19-07)

08. Remainder After Calculation. Any remainder after the calculation in Subsection 400.05 of this rule is the maximum participation to be deducted from the participant's provider payments to offset the cost of services. The participation amount will be collected from the participant by the provider. The provider and the participant will be notified by the Department of the amount to be collected. (3-19-07)

09. Recalculation of Participation. The participant’s participation amount must be recalculated annually at redetermination or whenever a change in income or deductions becomes known to the Department. (3-19-07)

10. Adjustment of Participation Overpayment or Underpayment Amounts. The participant’s participation amount is reduced or increased the month following the month the participant overpaid or underpaid the provider. (3-19-07)