

Dear Senators PATRICK, Souza, Ward-Engelking, and  
Representatives DIXON, Furniss, Berch:

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

IDAPA 18.04.01 - Health Carrier External Review (New Chapter) - Proposed Rule (Docket No.  
18-0401-2101);

IDAPA 18.04.02 - Complications of Pregnancy, Newborn, and Adopted Children Coverage (New  
Chapter) - Proposed Rule (Docket No. 18-0402-2101).

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 09/20/2021. 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 10/18/2021.

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.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

**FROM:** Principal Legislative Drafting Attorney - Elizabeth Bowen

**DATE:** September 03, 2021

**SUBJECT:** Department of Insurance

IDAPA 18.04.01 - Health Carrier External Review (New Chapter) - Proposed Rule (Docket No. 18-0401-2101)

IDAPA 18.04.02 - Complications of Pregnancy, Newborn, and Adopted Children Coverage (New Chapter) - Proposed Rule (Docket No. 18-0402-2101)

#### Summary and Stated Reasons for the Rule

Docket No. 18-0401-2101: This proposed rule establishes uniform requirements for health carriers and independent review organizations in implementing external review procedures pursuant to chapter 59, title 41, Idaho Code, for the purpose of facilitating the resolution of issues regarding services denied by health carriers.

Docket No. 18-0402-2101: This proposed rule establishes uniform requirements for providing coverage to newborn and newly adopted children in accordance with various provisions of the Idaho Code.

#### Negotiated Rulemaking / Fiscal Impact

Docket No. 18-0401-2101: Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

Docket No. 18-0402-2101: Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

#### Statutory Authority

Docket No. 18-0401-2101: The Department appears to have authority to promulgate this rule pursuant to Section 41-211 and chapter 59, title 41, Idaho Code.

Docket No. 18-0402-2101: The Department appears to have authority to promulgate this rule pursuant to Section 41-211, Idaho Code.

cc: Department of Insurance  
Pamela Murray

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
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**\*\*\* 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.

**IDAPA 18 – DEPARTMENT OF INSURANCE**

**18.04.01 – HEALTH CARRIER EXTERNAL REVIEW**

**DOCKET NO. 18-0401-2101 (NEW CHAPTER)**

**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 41-211, 41-5904, and 41-5911, Idaho Code.

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

<b>Monday, September 20, 2021 @ 2:00 p.m. (MT)</b>
<b>700 W State Street 3rd Floor Boise, ID 83702</b>

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:

This rule sets forth uniform requirements to be followed by health carriers and independent review organizations in implementing external review procedures in accordance with [Title 41, Chapter 59, Idaho Code](#). This rulemaking facilitates the resolution of accountability and responsibility issues regarding services denied by health insurance carriers.

**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: None.

**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 June 2, 2021 Idaho Administrative Bulletin, [Vol. 21-6, pages 56-57](#) under docket 18-ZBRR-2101.

**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 Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

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 22, 2021.

DATED this July 29, 2021.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0401-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**18.04.01 – HEALTH CARRIER EXTERNAL REVIEW**

**000. LEGAL AUTHORITY.**

Title 41, Chapters 2 and 59, Idaho Code. ( )

**001. SCOPE.**

This rule sets forth uniform requirements to be followed by health carriers and independent review organizations in implementing external review procedures in accordance with Title 41, Chapter 59, Idaho Code. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The definitions set forth in Title 41, Chapter 2 and 59 are applicable to these rules. In addition, the following term has the following meaning: ( )

**01. URAC.** The nationally recognized private health care accreditation organization based in Washington, D.C., that accredits independent review organizations. ( )

**011. -- 019. (RESERVED)**

**020. NOTICE OF RIGHT TO EXTERNAL REVIEW.**

**01. Disclosure to Covered Persons.** Health carriers will provide external review procedures to covered persons as per Chapter 59, Title 41 and in manner as directed by the Department. ( )

**02. Notice to Covered Person.** In accordance with Chapter 59, Title 41: ( )

**a.** The written notice of the covered person's right to request an external review is to use the form posted on the Department's website or is substantially similar. Health carriers are to submit notice forms to the Director for approval; and ( )

**b.** The written notice sent by the health carrier as prescribed by this subsection is to include an authorization form to disclose protected health information in compliance with the federal regulation and in a manner as approved by the Department. ( )

**021. REQUEST FOR EXTERNAL REVIEW.**

**01. Request Form.** The form for a covered person to request an external review will be available from

the Department and will be posted on the Department's web site. ( )

**02. Authorization Form.** The covered person's request for an external review is to include an authorization form to disclose protected health information prescribed in Paragraph 020.02.b. ( )

**022. HEALTH CARRIER NOTICE OF INITIAL DETERMINATION OF AN EXTERNAL REVIEW REQUEST.**

Health carriers are to use the form posted on the Department's website or one substantially similar as determined by the Department. ( )

**023. APPROVAL OF INDEPENDENT REVIEW ORGANIZATIONS.**

**01. Application for Registration.** Independent review organizations need to apply to the department on the requisite form and pay the applicable fees, as set forth at IDAPA 18.01.02, to be registered to perform external reviews. ( )

**02. Notice to Director.** ( )

**a.** An independent review organization will notify the Director in writing within thirty (30) days of the date the independent review organization is no longer accredited by a nationally recognized private accrediting entity or no longer satisfies the minimum requirements established under Title 41, Chapter 59, Idaho Code and this rule. ( )

**b.** Any change in the independent review organization's schedule of costs and fees for performing external reviews need to be submitted to the Director at least sixty (60) days before the effective date of the change. ( )

**03. Termination of Approval.** The Director may immediately terminate approval of an independent review organization if the independent review organization no longer satisfies the requirements of Title 41, Chapter 59, Idaho Code, and this rule. Notice of termination will be in writing to the independent review organization and such organization will be deleted from the list of organizations approved to perform external reviews. If the independent review organization is performing an external review at the time of termination, the independent review organization will cease performing that review and immediately forward all information and documentation to the Director. ( )

**024. VOLUNTARY ELECTION BY ERISA PLAN ADMINISTRATOR.**

**01. Written Notice and Compliance.** If a single employer self-funded ERISA employee benefit plan administrator or designee voluntarily elects to comply with Title 41, Chapter 59, Idaho Code, the administrator or designee will comply with all provisions of Title 41, Chapter 59, Idaho Code, and this rule, as if it were a health carrier and, in a manner, as approved by the department on forms posted on the Department's website. ( )

**025. -- 999. (RESERVED)**

## IDAPA 18 – DEPARTMENT OF INSURANCE

### 18.04.02 – COMPLICATIONS OF PREGNANCY, NEWBORN, AND ADOPTED CHILDREN COVERAGE

#### DOCKET NO. 18-0402-2101 (NEW CHAPTER)

#### 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(s) 41-211, Idaho Code.

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

<b>Monday, September 20, 2021 @ 2:00 p.m. (MT)</b>
<b>700 W State Street 3rd Floor Boise, ID 83702</b>

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:

This rule sets forth uniform requirements for providing coverage to newborn and newly adopted children in accordance with [Sections 41-2140, 41-2210, 41-3437, 41-3923, 41-4023, and 41-4123](#), Idaho Code. This rulemaking clarifies language and incorporates the provisions of Rule No. 18.04.09 - Complications of Pregnancy.

**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: None.

**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 June 2, 2021 Idaho Administrative Bulletin, [Vol. 21-6, pages 56-57](#) under docket 18-ZBRR-2101.

**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 Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

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 22, 2021.

DATED this July 29, 2021.

Dean L. Cameron, Director  
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700 W. State Street, 3rd Floor  
P.O. Box 83720  
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Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0402-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**18.04.02 – COMPLICATIONS OF PREGNANCY, NEWBORN, AND**  
**ADOPTED CHILDREN COVERAGE**

**000. LEGAL AUTHORITY.**

Title 41, Chapter 2, Idaho Code. ( )

**001. SCOPE.**

This rule sets forth uniform definitions and requirements to be followed by health plans regarding involuntary complications of pregnancy and coverage to newborn and newly adopted children. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

As used in this chapter the following terms have the following meanings. ( )

**01. Congenital Anomaly.** A condition existing at or from birth that is a significant deviation from the common form or function of the body, impairing the function of the body, whether caused by a hereditary or developmental defect or disease. ( )

**02. Health Plan.** Any type of benefit plan or contract of coverage subject to the requirements of Title 41, Chapters 21, 22, 34, 39, 40, or 41, Idaho Code, which provides coverage for injury or sickness. ( )

**03. Health Plan Member.** A person entitled to benefits as a member, subscriber or insured under a health plan and who, under the terms of the health plan contract, may add dependents for coverage under the health plan. ( )

**011. COVERAGE REQUIREMENTS OF NEWBORN AND NEWLY ADOPTED CHILDREN.**

**01. Coverage.** A health plan will provide coverage to: ( )

**a.** A newborn child and ( )

**b.** A newly adopted child. ( )

**02. Coverage Requirements.** Coverage of newborn and newly adopted children will be at least equivalent to the coverage afforded other health plan members under the health plan and include coverage for the medically necessary care and treatment of congenital anomalies. ( )



**03. Pre-Existing Conditions.** A health plan cannot apply a pre-existing condition exclusion to a newborn or newly adopted child. ( )

**04. Reconstructive Surgery.** A health plan will not exclude reconstructive surgery for congenital anomalies. ( )

**05. Limitations on Coverage for Congenital Anomalies.** A health plan may apply exclusions, requirements or benefit limitations, including cost sharing requirements, to coverage for congenital anomalies that are consistent with the requirements of this chapter and no more restrictive than exclusions, requirements or benefit limitations applied to coverage for similar treatments, conditions and services provided under the health plan. ( )

**06. Notification and Payment.** ( )

**a.** If notice and payment of additional premium are needed for dependent coverage under the health plan contract, the contract may request notice of birth, placement or adoption and payment of associated premium as a condition of coverage for newborn and newly adopted children. The notification period cannot be less than sixty (60) days from the date of birth for a newborn child or, for newly adopted children, sixty (60) days from the earlier of the date of adoption or placement for adoption. The due date for payment of any additional premium, if requested, cannot be not less than thirty-one (31) days following receipt by the health plan member of a billing for the premium. ( )

**b.** All requirements for notice and payment of premium applied by the health plan for the enrollment of newborn or newly adopted children are to be clearly set forth in the health plan contract and provided to the health plan members in a manner reasonably calculated to provide notice to the members of the requirements. ( )

**c.** If the health plan member fails to provide the requested notification, or make the associated premium payment, the health plan may decline to enroll a dependent child as a newborn or newly adopted child, but will treat a newborn or newly adopted child no less favorably than it treats other applicants who seek coverage at a time other than when first eligible for coverage. ( )

**d.** For self-funded health care plans subject to Title 41, Chapter 40 or 41, Idaho Code, any references to premium in this chapter should be recognized to be applying to contributions. ( )

**07. Portability.** The coverage provided by this section applies to any subsequent health plans providing coverage to the newborn or newly adopted child. ( )

**012. -- 020. (RESERVED)**

**021. COVERAGE OF INVOLUNTARY COMPLICATIONS OF PREGNANCY.**

Involuntary complications of pregnancy, as that term is used in Title 41, Idaho Code, also includes but is not limited to: ectopic pregnancy which is terminated; spontaneous termination of pregnancy which occurs during a period of gestation in which a viable birth is not possible; and conditions requiring hospital confinement (when the pregnancy is not terminated), whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as acute nephritis, nephrosis, cardiac decompensation, missed abortion and similar medical and surgical conditions of comparable severity, but not false labor, occasional spotting, physician prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, preeclampsia and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy. ( )

**022. -- 999. (RESERVED)**