

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 16.05.06 - Criminal History and Background Checks - Proposed Rule (Docket No.
16-0506-1901);

IDAPA 16.05.06 - Criminal History and Background Checks - Proposed Rule (Docket No.
16-0506-1902).

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 10/25/2019. 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 11/25/2019.

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 07, 2019

SUBJECT: Department of Health and Welfare

IDAPA 16.05.06 - Criminal History and Background Checks - Proposed Rule (Docket No. 16-0506-1901)

IDAPA 16.05.06 - Criminal History and Background Checks - Proposed Rule (Docket No. 16-0506-1902)

Summary and Stated Reasons for the Rule

Docket 16-0506-1901: This proposed rule authorizes the Department's Criminal History Unit to complete background checks for members of Citizen Review Panels in the health districts, in order to comply with Senate Bill 1341 (2018).

Docket 16-0506-1902: At the request of stakeholders, this proposed rule clarifies provisions relating to criminal history background checks, including: 1) persons subject to background checks; 2) record-keeping requirements; and 3) disqualifying criminal offenses.

Negotiated Rulemaking / Fiscal Impact

Docket 16-0506-1901: Negotiated rulemaking was not conducted due to the nature of the rule change, which is to conform to the law. There is no anticipated negative fiscal impact on the state general fund.

Docket 16-0506-1902: Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

Docket 16-0506-1901: This rulemaking appears to be within the Department's statutory authority.

Docket 16-0506-1902: This rulemaking appears to be within the Department's statutory authority.

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

*** PLEASE NOTE ***

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
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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 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1901

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 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code; Section 16-1647, Idaho Code; and 42 USC Section 9858f.

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 18, 2019.

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 Idaho Legislature passed Senate Bill 1341 during the 2018 legislative session that amended the Child Protective Act and went into effect on July 1, 2018. Under this bill, a new Section (16-1647, Idaho Code) was added to the Child Protective Act; it mandated the creation of Citizen Review Panels in each of the state's public health districts, comprised of volunteers who are required to review all child protective act cases open for 120 days or more. On a quarterly basis, the panels evaluate and report on recommendations to the Idaho Legislature for the improvement of the child protection system experience for children. This law requires that panel members must pass a criminal background check.

This rule change amends this chapter to authorize the Department of Health and Welfare's Criminal History Unit to complete background checks on Citizen Review Panel Members to assist Public Health Districts to fulfill the mandates of Section 16-1647, Idaho Code. Suitability of applicant qualifications are determined by each Health District. The Criminal History Unit participates only in the processing of background checks.

These changes also contain simplification of Section 100 into a table while removing unnecessary language and classes that are no longer contained in IDAPA code.

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 resulting from this rulemaking:

The effect of this rule change is cost-neutral to the State General Fund. The Department expects to process not more than 50 background checks for Citizen Review Panel volunteers in SFY 2019 and successive years. The background check fee to be collected for each one is sufficient to cover their costs.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because health and/or safety concerns preclude negotiation of rule.

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 Fernando Castro at (208) 332-7999. 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 25, 2019.

Dated this 31st day of July, 2019.

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 RULE TEXT OF DOCKET NO. 16-0506-1901
(Only Those Sections With Amendments Are Shown.)

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.
The temporary effective date is January 1, 2019.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 19-1, January 2, 2019, pages 86 through 88.

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or Department rules to complete a criminal history and background check. (3-4-11)

~~01. **Adoptive Parent Applicants.** Individuals who must comply with IDAPA 16.06.01, "Child and Family Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)~~

~~02. **Behavioral Health Programs.** Individuals who must comply with IDAPA 16.07.15, "Behavioral Health Programs." (3-24-17)~~

~~03. **Certified Family Homes.** Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)~~

~~04. **Children's Residential Care Facilities.** Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)~~

~~05. **Children's Therapeutic Outdoor Programs.** Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)~~

~~06. **Contracted Non-Emergency Medical Transportation Providers.** Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-4-11)~~

~~07. **Court Appointed Guardians and Conservators.** Individuals who must comply with the requirements of Title 15, Chapter 5, Idaho Code, and Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules. (3-20-14)~~

- ~~08. **Designated Examiners and Designated Dispositioners.** Individuals who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (3-4-11)~~
- ~~09. **Developmental Disabilities Agencies.** Individuals who must comply with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)~~
- ~~10. **Emergency Medical Services (EMS).** Individuals who must comply with IDAPA 16.01.05, "Emergency Medical Services (EMS) — Education, Instructor, and Examination Requirements," and IDAPA 16.01.07, "Emergency Medical Services (EMS) — Personnel Licensing Requirements." (3-24-17)~~
- ~~11. **High Risk Providers of Medicaid.** Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and the Medicaid Provider Handbook. (4-6-15)~~
- ~~12. **Home and Community Based Services (HCBS).** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (7-1-12)~~
- ~~13. **Home Health Agencies.** Individuals who must comply with IDAPA 16.03.07, "Home Health Agencies." (3-4-11)~~
- ~~14. **Idaho Behavioral Health Plan (IBHP).** Individuals who are contractors, contractor's employees, and subcontractors in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (4-6-15)~~
- ~~15. **Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." (3-4-11)~~
- ~~16. **Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).** Individuals who must comply with IDAPA 16.03.11, "Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID)." (3-4-11)~~
- ~~17. **Licensed Foster Care.** Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)~~
- ~~18. **Licensed Day Care.** Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)~~
- ~~19. **Mental Health Services.** Individuals who must comply with IDAPA 16.07.33, "Adult Mental Health Services," and IDAPA 16.07.37, "Children's Mental Health Services." (4-6-15)~~
- ~~20. **Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)~~
- ~~21. **Personal Care Service Providers.** Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)~~
- ~~22. **Residential Care or Assisted Living Facilities in Idaho.** Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (3-4-11)~~
- ~~23. **Service Coordinators and Paraprofessional Providers.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)~~
- ~~24. **Skilled Nursing and Intermediate Care Facilities.** Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." (3-4-11)~~
- ~~25. **Substance Use Disorders Services.** Individuals who must comply with IDAPA 16.07.17, "Substance Use Disorders Services." (4-11-19)~~

~~26. Support Brokers and Community Support Workers. Individuals who must comply with IDAPA 16.03.13, "Consumer Directed Services."~~ (3-4-11)

<u>Required Classes</u>	<u>Idaho Code and IDAPA Chapter(s)</u>
<u>01. Adoptive Parent Applicants</u>	<u>IDAPA 16.06.01, "Child and Family Services"</u> <u>IDAPA 16.06.02, "Child Care Licensing"</u>
<u>02. Certified Family Homes</u>	<u>Section 39-3520, Idaho Code</u> <u>IDAPA 16.03.19, "Certified Family Homes"</u> <u>IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"</u>
<u>03. Children's Agency Facility Staff</u>	<u>IDAPA 16.06.02, "Child Care Licensing"</u>
<u>04. Children's Residential Care Facilities</u>	<u>Section 39-1210, Idaho Code</u> <u>IDAPA 16.06.02, "Child Care Licensing"</u>
<u>05. Children's Therapeutic Outdoor Programs</u>	<u>Section 39-1208, Idaho Code</u> <u>IDAPA 16.06.02, "Child Care Licensing"</u>
<u>06. Citizen Review Panel Members</u>	<u>Public health district volunteers who must comply with</u> <u>Section 16-1647, Idaho Code, "Citizen Review Panels -</u> <u>Child Protection Legislative Review Panel"</u>
<u>07. Contracted Non-Emergency Medical Transportation Providers</u>	<u>IDAPA 16.03.09, "Medicaid Basic Plan Benefits"</u>
<u>08. Court Appointed Guardians and Conservators</u>	<u>Title 15, Chapter 5, Idaho Code</u> <u>Title 66, Chapter 4, Idaho Code. Court required guardian</u> <u>and conservator criminal history and background checks</u> <u>are not provided Department clearances described in</u> <u>Section 180.01 of these rules</u>
<u>09. Designated Examiners and Dispositioners</u>	<u>IDAPA 16.07.39, "Appointment of Designated Examiners</u> <u>and Dispositioners"</u>
<u>10. Developmental Disabilities Agencies</u>	<u>IDAPA 16.01.05, "Emergency Medical Services (EMS) --</u> <u>Education, Instructor, and Examination Requirements"</u> <u>IDAPA 16.01.07, "Emergency Medical Services (EMS) --</u> <u>Personnel Licensing Requirements"</u>
<u>11. Emergency Medical Services (EMS)</u>	<u>IDAPA 16.03.09, "Medicaid Basic Plan Benefits"</u> <u>The Medicaid Provider Handbook</u>
<u>12. High Risk Providers of Medicaid</u>	<u>IDAPA 16.03.09, "Medicaid Basic Plan Benefits"</u> <u>The Medicaid Provider Handbook</u>
<u>13. Home and Community-Based Services (HCBS)</u>	<u>IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"</u> <u>IDAPA 16.04.17, "Residential Habilitation Agencies"</u>
<u>14. Home Health Agencies</u>	<u>IDAPA 16.03.07, "Home Health Agencies"</u>
<u>15. Idaho Behavioral Health Plan (IBHP)</u>	<u>IDAPA 16.03.09, "Medicaid Basic Plan Benefits"</u>
<u>16. Idaho Child Care Program (ICCP)</u>	<u>IDAPA 16.06.12, "Idaho Child Care Program"</u>
<u>17. Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)</u>	<u>IDAPA 16.03.11, "Intermediate Care Facilities for Individu-</u> <u>als with Intellectual Disabilities (ICF/IID)"</u>
<u>18. Licensed Foster Care</u>	<u>Section 39-1211, Idaho Code</u> <u>IDAPA 16.06.02, "Child Care Licensing"</u>

<u>Required Classes</u>	<u>Idaho Code and IDAPA Chapter(s)</u>
<u>19. Licensed Day Care</u>	<u>Sections 39-1105, 39-1113, and 39-1114, Idaho Code</u> <u>IDAPA 16.06.02, "Child Care Licensing"</u>
<u>20. Mental Health Services</u>	<u>IDAPA 16.07.33, "Adult Mental Health Services"</u> <u>IDAPA 16.07.37, "Children's Mental Health Services"</u>
<u>21. Personal Assistance Agencies</u>	<u>IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"</u>
<u>22. Personal Care Service Providers</u>	<u>Section 39-5604, Idaho Code</u> <u>IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"</u>
<u>23. Residential Assisted Living Facilities</u>	<u>IDAPA 16.03.22, "Residential Assisted Living Facilities"</u>
<u>24. Service Coordinators and Paraprofessional Providers</u>	<u>IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"</u>
<u>25. Skilled Nursing and Intermediate Care Facilities</u>	<u>IDAPA 16.03.02, "Skilled Nursing Facilities"</u>
<u>26. Substance Use Disorders Services</u>	<u>IDAPA 16.07.17, "Substance Use Disorders Services"</u>
<u>27. Support Brokers and Community Support Workers</u>	<u>IDAPA 16.03.13, "Consumer-Directed Services"</u>

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(BREAK IN CONTINUITY OF SECTIONS)

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check as described in Section 100 of these rules. (7-1-17)()

- 01. **Adoptive Parent Applicants.** *Described in Subsection 100.01 of these rules.* (7-1-17)()
- ~~02. **Behavioral Health Programs.** *Described in Subsection 100.02 of these rules.* (7-1-17)~~
- 02. Children's Agency Facility Staff.** ()
- 03. **Children's Residential Care Facilities.** *Described in Subsection 100.04 of these rules.* (7-1-17)()
- 04. **Children's Therapeutic Outdoor Programs.** *Described in Subsection 100.05 of these rules.* (7-1-17)()
- 05. **Idaho Child Care Program (ICCP).** *Described in Subsection 100.16 of these rules.* (7-1-17)()
- 06. **Licensed Foster Care.** *Described in Subsection 100.18 of these rules.* (7-1-17)()
- 07. **Licensed Day Care.** *Described in Subsection 100.19 of these rules.* (7-1-17)()
- 08. **Mental Health Services.** *Described in Subsection 100.20 of these rules.* (7-1-17)()
- 09. **Substance Use Disorders Services.** *Described in Subsection 100.26 of these rules.* (4-11-19)()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1902

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 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15- 5-316(5), Idaho Code. Under 42 USC Section 9858f, the Department is required to check certain records for federal child care programs.

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 18, 2019.

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:

1. Stakeholders have expressed a desire for the Department to clarify who is subject to the background check.
2. Stakeholders have expressed a desire for the Department to clarify background check documentation record keeping requirements.
3. Stakeholders have expressed a desire for the Department to clarify when an incomplete application is no longer viable for processing.
4. The Department has determined that the crime of “assault with intent to commit a serious felony,” Section 18-909, Idaho Code, is indicative of the inability of the applicant to care for the vulnerable. Therefore, it wishes to add it to the list of disqualifying offenses of the rule.
5. Stakeholders have expressed a desire for the Department to clarify when a new background check or state-only check is required for a rehired employee.
6. FBI has requested that references to the federal Nation Crime Information Center and the federal Sex Offender Registry be removed.

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

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

There is no fiscal impact to the State General Fund or to dedicated funds for these rule changes. This rulemaking is intended to be cost-neutral. The Department will have to change its web-based background check system to enable this change. It estimates that the cost of these system changes will be \$3,000.00. These modifications will be performed by DHW Information Technology staff, and it is an expense that is already integrated in the operational budget of the Department.

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 5, 2019, Idaho Administrative Bulletin, [Vol. 19-6, pages 61-62](#).

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 Fernando Castro, (208) 332-7999.

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 25, 2019.

Dated this 31st day of July, 2019.

Tamara Prisock
DHW - Administrative Rules Unit
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P.O. Box 83720
Boise, ID 83720-0036
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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0506-1902
(Only Those Sections With Amendments Are Shown.)**

001. TITLE, SCOPE AND POLICY.

01. Title. These rules are titled IDAPA 16.05.06, “Criminal History and Background Checks.” (3-26-08)

02. Scope. These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to children or vulnerable adults. Individuals requiring a criminal history check are identified in Department rules. (7-1-17)

03. Policy. It is the Department’s policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information regarding crimes or findings that would disqualify the individual from providing care or services to children or vulnerable adults. The Department may obtain information for these criminal history and background checks from the following sources: (7-1-17)

- a.** Federal Bureau of Investigation; (3-26-08)
- ~~**b.** National Crime Information Center;~~ (~~3-26-08~~)
- ~~**eb.** Idaho State Police Bureau of Criminal Identification;~~ (3-26-08)
- ~~**dc.** Any state or federal Child Protection Registry;~~ (7-1-17)
- ~~**ed.** Any state or federal Adult Protection Registry;~~ (7-1-17)
- ~~**fe.** Any state ~~or federal~~ Sexual Offender Registry;~~ (~~7-1-17~~)()
- ~~**gf.** Office of Inspector General List of Excluded Individuals and Entities;~~ (3-26-08)
- ~~**hg.** Idaho Department of Transportation Driving Records;~~ (3-26-08)

- h.** Nurse Aide Registry; **and** ~~(3-26-08)~~()
- i.** Other states and jurisdictions records and findings. (7-1-17)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter of rules, the following terms apply: (7-1-12)

01. Agency. An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term employer. (7-1-12)

02. Application. An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

03. Clearance. A clearance is a document designated by the Department as the official result of a completed criminal history and background check with no disqualifying crimes or relevant records found. (7-1-17)

04. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.034.a. through 010.034.d. of this rule: ~~(3-26-08)~~()

a. When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)

b. When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)

c. When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)

d. When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)

i. When the individual has entered into participation in a drug court; or (3-26-08)

ii. When the individual has entered into participation in a mental health court. (3-26-08)

05. Criminal History and Background Check. A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. (3-4-11)

06. Criminal History Unit. The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)

07. Denial. A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: (3-26-08)

a. Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)

b. Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. (3-4-11)

08. Department. The Idaho Department of Health and Welfare or its designee. (3-26-08)

09. Direct Patient Access Employee. Any individual who has access to a patient or resident of a long-term care provider, or facility whether through employment or contract and who has duties or performs tasks that involve (or may involve) one-on-one (1:1) contact with a patient or resident or has access to his personal belongings. Volunteers are not considered a Direct Patient Access employee of a long-term care provider or facility unless volunteers are required to undergo a criminal history background check per the rules applicable to that specific type of facility or provider. ()

10. **Disqualifying Crime.** A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)

101. **Employer.** An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. (7-1-12)

112. **Enhanced Clearance.** An enhanced clearance is a clearance issued by the Department that includes a search of child protection registries in states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. (7-1-17)

123. **Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

134. **Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

145. **Good Cause.** Substantial reason, one that affords a legal excuse. (3-4-11)

156. **Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

167. **Relevant Record.** A relevant record is a record that is found in a search of criminal records or registries checked by the Department as provided in Section 56-1004A, Idaho Code. (7-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

060. EMPLOYER REGISTRATION.

01. **Initial Registration.** Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed or accessed. (7-1-14)

02. **Change in Name or Ownership.** ~~When a~~An agency or facility ~~must:~~ (7-1-14)()

a. ~~If~~acquired by another entity, the new ownership ~~must will~~ register as a new employer and provide contact information to obtain a new employer identification number and website access within thirty (30) calendar days of acquisition. New ownership occurs when the agency obtains a new federal Employer Identification Number with the Internal Revenue Service. (7-1-14)()

b. ~~If there is a~~changes to its name or location, the employer ~~must will~~ provide the new name, location, and contact information to the Department within thirty (30) calendar days of the change. (7-1-14)()

061. EMPLOYER RESPONSIBILITIES.

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for

employment as described in Subsections 061.01 through 061.03 of these rules in this rule. (3-26-08)(____)

01. Screen Applicants. The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. (3-26-08)

02. Maintain Printed Copy of Application. The employer must maintain a copy of the printed, signed, and notarized criminal history and background check application for all individuals required to obtain a criminal history and background check. ~~This copy must be readily available for inspection to verify compliance with this requirement. An employer who chooses to use a criminal history and background check obtained for a previous employer must comply with Section 300 of these rules and maintain copies of the records.~~ (7-1-17)(____)

a. The copy of the application must be readily available for inspection to verify compliance with this requirement. The document must be retained for a period consistent with the employer's own personnel documentation retention schedule. (____)

b. An employer who chooses to use a criminal history and background check obtained for a previous employer must comply with Section 300 of these rules and maintain copies of the records identified in Subsections 190.01 and 300.02.c. of these rules. (____)

03. Ensure Time Frames Are Met. The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. (3-26-08)

04. Employment Determination. The employer is responsible for reviewing the results of the criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then will make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. (3-4-11)(____)

(BREAK IN CONTINUITY OF SECTIONS)

150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.

The completed notarized application and fingerprints must be received by the Department within twenty-one (21) days from the date of ~~notarization~~ submission in the Department background check system whether ~~submitted~~ it is sent by mail or accepted at a Department fingerprinting location. If the Department does not receive the criminal history and background check application and applicant fingerprints within sixty (60) calendar days from its submission in the department website, the applicant must complete a new application. (7-1-14)(____)

01. Availability to Provide Services. The applicant- may provide services on the day the application is signed and notarized, as long as the applicant has not disclosed any disqualifying crimes or relevant records. The applicant must provide the Department a copy of the signed and notarized application to validate the date of applicant's availability to provide services. (7-1-14)(____)

a. ~~Is available to provide services on the day the application is signed and notarized, as long as the applicant has not disclosed any disqualifying crimes or relevant records. The applicant must provide the Department a copy of the signed and notarized application to validate the date of applicant's availability to provide services.~~ (7-1-14)

b. ~~Becomes unavailable to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been collected within this time frame.~~ (7-1-14)

c. ~~Who submits a complete application and fingerprints by mail, and the application is deemed inadequate or incomplete for processing by the Department, is unavailable to provide services until the application is~~

~~received by the Department completed and corrected.~~

~~(7-1-14)~~

02. **Unavailability to Provide Services.** ~~The applicant becomes unavailable to provide services or be licensed or certified when the notarized application is not received or fingerprints have not been collected within this timeframe, or the application is deemed inadequate or incomplete for processing by the Department.~~ ()

023. **Incomplete Application.** The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (7-1-12)

034. **No Extension of Time Frame.** The Department will not extend the twenty-one (21) day time frame, unless the applicant or employer provides just cause. An applicant for employment or employer can not submit a new application for the same purpose, or repeatedly re-sign and re-notarize the original application. (7-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on ~~his~~ their record as described in Subsections 210.01 and 210.02 of this rule. ~~(3-26-08)~~ ()

01. **Disqualifying Crimes.** The disqualifying crimes, described in Subsections ~~210.01.a. through 210.01.ee.~~ of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. ~~(7-1-17)~~ ()

- a.** Crimes against vulnerable adults: (7-1-17)
 - i.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)
 - ii.** Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; (7-1-17)
 - iii.** Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. (7-1-17)
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
- c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
- d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
- e.** Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; (7-1-17)
- f.** Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; (7-1-17)
- g.** Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- h.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- i.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- j.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)

- k. Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- l. Manslaughter: (7-1-12)
 - i. Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; (7-1-12)
 - ii. Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; (7-1-12)
 - iii. Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; (7-1-12)
- m. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (7-1-12)
- n. Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- o. Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- p. Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- q. Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- r. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- s. Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; (7-1-17)
- t. Sexual abuse or exploitation of a child, as defined in Sections 18-1506, Idaho Code; (7-1-17)
- u. Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; (7-1-17)
- v. Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; (7-1-17)
- w. Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- x. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- y. Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)
- z. Any felony punishable by death or life imprisonment; (7-1-17)
- aa. Attempted strangulation, as defined in Section 18-923, Idaho Code; (7-1-17)
- bb. Felony domestic violence, as defined in Section 18-918, Idaho Code; (7-1-17)
- cc. Battery with intent to commit a serious felony, as defined in Section 18-911, Idaho Code; ()
- dd. Assault with intent to commit a serious felony, as defined in Section 18-909, Idaho Code; or ()
- eee. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.n. of this rule, or any substantially conforming foreign criminal violation: (7-1-17)()

- a. Any felony not described in Subsection 210.01, of this rule; (3-4-11)
 - b. Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; (7-1-17)
 - c. Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; (7-1-17)
 - d. Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
 - e. Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)
 - f. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
 - g. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
 - h. Public assistance fraud, as defined in Sections 56-227, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; (7-1-17)
 - i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; (7-1-17)
 - j. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)
 - k. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; (7-1-14)
 - l. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; (7-1-17)
 - m. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; (7-1-17)
- or
- n. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a. A withheld judgment; (3-26-08)
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d. A sealed record. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same employer eliminates the requirement for a new background check. ~~The~~

~~provisions stipulated on Subsections 300.03 and 300.04 of this rule still apply.~~

~~(7-1-12)()~~

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

a. Accepting employment with a new employer, ~~and their last Department criminal history and background check was completed more than three (3) years prior to their employment date;~~ or ~~(3-26-08)()~~

b. Applying for licensure or certification with the Department, ~~and their last Department criminal history and background check was completed more than three (3) years prior to their employment date or licensure application date;~~ ~~(3-26-08)()~~

~~**e.** His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)~~

c. ~~If an applicant is terminated by the employer, is rehired by the same employer, and the applicant background check is older than three (3) years at the time of the rehire, the provisions of Subsections 300.01.a. through 300.01.b. of this rule apply. ()~~

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

a. The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; (4-6-15)

b. Prior to allowing the individual to provide services, the employer must obtain access to the individual's background check results and clearance through the Department's website by having the employer's identification number added to the individual's background check results, and (4-6-15)

c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)

i. The action must be initiated by the employer within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and (7-1-12)

ii. The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.c. of this rule for a period consistent with the employer's own personnel documentation retention schedule. (7-1-17)

d. ~~If an applicant is terminated by the employer, is rehired by the same employer, and the applicant background check was completed less than three (3) years from the time of the rehire, the provisions of Subsections 300.02.b. and 300.02.c. of this rule apply. ()~~

~~**de.** An employer not listed in Section 126 of these rules, may use an individual's Department clearance or enhanced clearance that was obtained within three (3) years from date of employment. (7-1-17)~~

ef. An individual with a current clearance that is within three (3) years from date of employment, who applies to a new agency or employer identified in Section 126 of these rules, must submit an application for a new criminal history and background check to obtain an enhanced clearance. (7-1-17)

03. Employer Discretion. Any agency or employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. (7-1-17)

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the

individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required.

(3-26-08)