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Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators MARTIN, Riggs, Wintrow and,
Representatives WOOD, Vander Woude, Chew

FROM: Elizabeth Bowen - Principal Legislative Drafting Attorney

DATE: January 11, 2021

SUBJECT: Temporary Rule

IDAPA 16.02.09 - Crisis Standards of Care for Healthcare Entities - Adoption of Temporary Rule -
Docket No. 16-0209-2101

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
16.02.09 – CRISIS STANDARDS OF CARE FOR HEALTHCARE ENTITIES
DOCKET NO. 16-0209-2101 (NEW CHAPTER)
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is December 11, 2020.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-1003(1), 56-1003(2), and 56-1003(3), Idaho Code.

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

The purpose of this new chapter of rule is to allow for the timely activation of crisis standards of care. Crisis standards of care will be activated when a pervasive (e.g., pandemic influenza), catastrophic (e.g., earthquake, hurricane), or extraordinary event or circumstance overwhelms usual health and medical capabilities and capacities, resulting in an inability of the healthcare system to provide the usual standard of care to patients.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the protection of the public health, safety, and welfare.

This Temporary rule is due to the rapidly rising number of COVID-19 cases and hospitalizations in Idaho. The activation of crisis standards of care allows healthcare entities to implement crisis strategies to address scarce resource situations when the usual standard of care cannot be provided.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Elke Shaw-Tulloch, (208) 334-5950.

Dated this 11th day of December, 2020.

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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 16-0209-2101
(New Chapter)

16.02.09 – CRISIS STANDARDS OF CARE FOR HEALTHCARE ENTITIES

000. LEGAL AUTHORITY.

The Idaho Legislature has granted to the Director the authority to formulate and recommend to the Idaho Board of Health and Welfare rules and standards as may be necessary to address public health issues under [Section 56-1003\(2\)](#), Idaho Code. Rulemaking functions relating to public health are vested by the Idaho Legislature in the Idaho Board of Health and Welfare under [Section 56-1003\(1\)](#), Idaho Code. Under [Section 56-1003\(3\)](#), Idaho Code, and the rules and laws of public health, the Director possesses the authority and may exercise the general supervision of the promotion and protection of the health of Idahoans. (12-11-20)T

001. TITLE, SCOPE, PURPOSE, AND APPLICABILITY.

01. Title. These rules are titled IDAPA 16.02.09, “Crisis Standards of Care for Healthcare Entities.” (12-11-20)T

02. Scope. These rules contain the standards and processes for the activation and deactivation of crisis standards of care for healthcare entities. Nothing in these rules prevents a healthcare entity from implementing their own resource allocation protocols or utilizing the crisis standards of care guidance documents if emergent circumstances require that the healthcare entity allocate scarce resources and these rules have not been activated. (12-11-20)T

03. Purpose. Crisis standards of care will be activated when a catastrophic disaster overwhelms usual health and medical capabilities and capacities, resulting in an inability of healthcare entities to provide the usual standard of care to patients. The activation of this plan triggers notification to healthcare entities and the seven (7) public health districts that crisis standards of care has been activated. (12-11-20)T

04. Applicability. This chapter of rules may be applied generally throughout the state or may be limited as to times, places, circumstances, or conditions to permit variation under [Section 56-1003\(2\)](#), Idaho Code. (12-11-20)T

002. -- 003. (RESERVED)

004. GUIDANCE DOCUMENTS.

The following resources are available to facilitate the implementation of crisis standards of care and are available at <https://healthandwelfare.idaho.gov/health-wellness/emergency-planning/emergency-preparedness>. These guidance documents may be revised upon recommendation by SIDMAC, to the Director and approval of the Board. (12-11-20)T

01. Any Available Checklists. (12-11-20)T

02. Crisis Standards of Care Guidelines. (12-11-20)T

03. Idaho Crisis Standards of Care. (12-11-20)T

04. Patient Care: Strategies for Scare Resource Situations. (12-11-20)T

005. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter of rules, the following terms apply: (12-11-20)T

- 01. Board.** The Idaho Board of Health and Welfare as described in [Section 56-1005, Idaho Code](#). (12-11-20)T
- 02. Catastrophic Disaster.** A pervasive (e.g., pandemic, influenza), catastrophic (e.g., earthquake, hurricane), or extraordinary event or circumstance that seriously disrupts the functioning of the state and causes human, material, economic, or environmental losses that exceed the state's ability to cope using its own resources. (12-11-20)T
- 03. Committee.** Crisis Standards of Care Activation Advisory Committee. (12-11-20)T
- 04. Crisis Standards of Care.** A substantial change in the usual health care operations and the level of care it is possible to deliver, justified by specific circumstances and formally declared by a state government in recognition that crisis operations will be in effect for a sustained period. (12-11-20)T
- 05. Department.** The Idaho Department of Health and Welfare. (12-11-20)T
- 06. Director.** The Director of the Idaho Department of Health and Welfare or their designee. (12-11-20)T
- 07. Department Senior Leadership.** The Director, Deputy Directors, Administrator and Deputy Administrator of the Division of Public Health, and the State Epidemiologist/Public Health Medical Director. (12-11-20)T
- 08. Healthcare Entity.** This includes hospitals, public health districts, emergency medical services, long-term care facilities, medical providers, and any other healthcare entities determined by the Director. (12-11-20)T
- 09. Scarce Resource Limitation.** Limitations in space, staff, or supplies that impair the ability of healthcare entities to provide the usual standard of care. (12-11-20)T
- 10. SIDMAC.** State of Idaho Disaster Medical Advisory Committee. (12-11-20)T

011. -- 099. (RESERVED)

100. ACTIVATION OF CRISIS STANDARDS OF CARE.

If the Department's senior leadership determines that all options for addressing resource limitations have been pursued, and critical shortages persist for which crisis standards of care activation is requested, the Director will convene the Committee. In a rapidly developing catastrophic disaster, the Director has the authority to activate crisis standards of care without convening the Committee. In such circumstances, the Director will convene the Committee as soon as reasonably possible. (12-11-20)T

01. Scarce Resource Limitation. The party or parties requesting crisis standards of care activation will present to the Committee the scarce resource limitation for which crisis standards of care activation is requested and the measures that have been taken to address the limitation, (12-11-20)T

02. Options for State and Federal Assistance. Department staff and the Idaho Office of Emergency Management will present options for state and federal assistance that can and have been pursued, including review of any applicable checklists. (12-11-20)T

03. Recommendation to Activate. If the Committee determines that all available contingency actions have been taken and no further options remain to address the resource limitations and that the scarcity is sufficient to warrant a shift from the usual standard of care to crisis standards of care, the Committee will make a recommendation to the Director to issue a declaration of crisis standards of care. (12-11-20)T

04. Communications to Activate. Crisis standards of care will be activated by a declaration from the Director. (12-11-20)T

101. -- 109. (RESERVED)

110. COMPOSITION OF COMMITTEE.

The Committee will be comprised of representatives from the Idaho Department of Health and Welfare, SIDMAC, Idaho Office of Emergency Management, Public Health Districts, Healthcare Entities, Board of Medicine, Idaho Hospital Association, Long-Term Care Facilities, Emergency Medical Services, and others as determined by the Director. The members of the Committee are selected and may be removed by the Director. (12-11-20)T

111. -- 119. (RESERVED)

120. EFFECT OF CRISIS STANDARDS OF CARE ACTIVATION.

Upon activation of crisis standards of care, affected healthcare entities may operate under crisis standards of care and are recommended to utilize the guidance in the Crisis Standards of Care Plan and the accompanying Patient Care Strategies for Scarce Resource Situations and other crisis standards of care guidelines developed and recommended by SIDMAC to the Director and approved by the Board. (12-11-20)T

121. -- 199. (RESERVED)

200. NOTIFICATION.

Once a declaration to activate or deactivate crisis standards of care has been made, the Department, the Idaho Office of Emergency Management, and the Governor's office will immediately notify through established communication channels all affected stakeholders, including healthcare entities, the media, and the public. (12-11-20)T

201. -- 299. (RESERVED)

300. COORDINATION.

During the time period in which crisis standards of care are activated, the Department and the Idaho Office of Emergency Management will work closely with the healthcare entities that have implemented crisis standards of care to receive resource requests and continue to pursue all options for obtaining those resources as urgently as possible. (12-11-20)T

301. -- 399. (RESERVED)

400. DEACTIVATION.

Crisis standards of care should be deactivated as soon as sufficient resources are obtained that allow a return to the usual standard of care. (12-11-20)T

01. Daily Monitoring. The Department and the Idaho Office of Emergency Management will monitor daily the specific shortages at the healthcare entities that have implemented crisis standards of care. (12-11-20)T

02. Ongoing Resource Shortages. The Committee may be convened by the Director to review ongoing resource shortages and the options and associated timelines for addressing the shortages. (12-11-20)T

03. Recommendation to Deactivate. As soon as it is determined that resources have become available, such that crisis standards of care may no longer be warranted, the Director will convene the Committee. If it is determined by the Committee that crisis standards of care conditions no longer exist, they will make a recommendation to the Director to deactivate crisis standards of care. (12-11-20)T

04. Communications to Deactivate. The Director will deactivate the crisis standards of care by declaration. (12-11-20)T

401. -- 999. (RESERVED)