

Dear Senators VANORDEN, Zuiderveld, Wintrow, and  
Representatives VANDER WOUDE, Erickson, Chew:

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

IDAPA 16.03.22 - Residential Assisted Living Facilities - Proposed Rule (Docket No. 16-0322-2301);

IDAPA 16.06.01 - Child and Family Services - Temporary and Proposed Rule (Docket No.  
16-0601-2301).

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 09/29/2023. 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 10/27/2023.

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 Kondoff**  
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:** July 6, 2023

**SUBJECT:** Department of Health and Welfare

IDAPA 16.03.22 - Residential Assisted Living Facilities - Proposed Rule (Docket No. 16-0322-2301)

IDAPA 16.06.01 - Child and Family Services - Temporary and Proposed Rule (Docket No. 16-0601-2301)

#### **Summary and Stated Reasons for the Rule**

Docket No. 16-0322-2301 -- This proposed rule is intended to alleviate staffing shortages at residential assisted living facilities by reducing the minimum age for certain personnel and giving the Department discretion about whether to revoke a facility's license under certain circumstances.

Docket No. 16-0601-2301 -- This temporary and proposed rule clarifies that family services workers, including social workers and other individuals with a human services degree, may assist children with grief when the children have been separated from their parents. The Department states that the rule change is necessary to better align the rule with current practice. The Governor finds that the temporary rule is justified for the protection of public health, safety, and welfare.

#### **Negotiated Rulemaking / Fiscal Impact**

Docket No. 16-0322-2301 -- Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

Docket No. 16-0601-2301 -- Negotiated rulemaking was not conducted due to the purpose of the rule change, which is simple in nature and intended to provide clarity. There is no anticipated negative fiscal impact on the state general fund.

#### **Statutory Authority**

Docket No. 16-0322-2301 -- This rulemaking appears to be authorized pursuant to Chapter 33, Title 39, Idaho Code.

Docket No. 16-0601-2301 -- This rulemaking appears to be authorized pursuant to several chapters of the Idaho Code, including Chapters 16, 21, and 24 in Title 16; chapters 12, 56, and 75 in Title 39; and chapters 2, 8, and 10 in Title 56.

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Norma Clark, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

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

Tel: 208-334-2475  
legislature.idaho.gov

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.

# IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

## 16.03.22 – RESIDENTIAL ASSISTED LIVING FACILITIES

DOCKET NO. 16-0322-2301

### 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 39-3305 and 39-3358, 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 July 19, 2023.

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:

Many facilities have communicated they are unable to admit residents based on their staffing levels which potentially leave residents without placement options. This rulemaking is being made by the Department of Health and Welfare (DHW) in collaboration with stakeholders such as the Idaho Health Care Association (IHCA). These changes are to assist and streamline the process for potential applicants for Residential Assisted Living Facilities (RALFs) while balancing the safety of residents. Changes include allows for widening of the labor pool for RALFs, and also gives the Department different options instead of only the revocation of a license.

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

There are no fee changes associated with this proposed rulemaking.

**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:

This rulemaking is not anticipated to have any fiscal impact on the State Funds, General Funds, or any other known funds.

**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 March 1, 2023, Idaho Administrative Bulletin, [Volume 23-3, pages 20 through 21](#).

**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:

There are no incorporation by reference changes included in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Moss, 208-830-6730.

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 July 26, 2023.

DATED this 26th day of May, 2023.

Trinette Middlebrook and Frank Powell  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5500 phone; (208) 334-6558 fax  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov) email

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0322-2301**  
**(Only Those Sections With Amendments Are Shown.)**

**110. FACILITY LICENSE APPLICATION.**

**01. License Application.** License application forms are available online at the Licensing Agency's website at <http://assistedliving.dhw.idaho.gov>. The applicant must provide the following information: (3-15-22)

**a.** A written statement that the applicant has thoroughly read and reviewed the statute, Title 39, Chapter 33, Idaho Code, and IDAPA 16.03.22, "Residential Assisted Living Facilities," and is prepared to comply with both; (3-15-22)

**b.** A written statement and documentation that demonstrate no license revocation or other enforcement action ~~has been taken, or~~ is in the process of being taken, against a license held, or previously held, by the applicant in Idaho or any other state or jurisdiction; (3-15-22)(    )

**c.** When the applicant is a firm, association, organization, partnership, business trust, corporation, government entity, or company, the administrator and other members of the organization who directly influence the facility's operation must provide the information contained in this rule; (3-15-22)

**d.** Each shareholder or investor holding ~~ten~~ twenty percent (~~+20%~~) or more interest in the business must be listed on the application; (~~3-15-22~~)(    )

**e.** A copy of the Certificate of Assumed Business Name from the Idaho Secretary of State; (3-15-22)

**f.** A statement from the local fire authority that the facility is located in a lawfully constituted fire district or affirmation that a lawfully constituted fire authority will respond to a fire at the facility; (3-15-22)

**g.** A statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical codes; (3-15-22)

**h.** When the facility does not use an approved municipal water or sewage treatment system, a statement from a local environmental health specialist with the public health district indicating that the water supply and sewage disposal system meet the Department's requirements and standards; (3-15-22)

**i.** A complete set of printed operational policies and procedures; (3-15-22)

**j.** A detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings. See Sections 250 through 260, and Sections 400 through 430 of these rules. (3-15-22)

**k.** A copy of the Purchase Agreement, Lease Agreement, or Deed; and (3-15-22)

**l.** For facilities with nine (9) beds or more, signatures must be obtained from the following: (3-15-22)

- i. The local zoning official documenting that the facility meets local zoning codes for occupancy; (3-15-22)
- and ii. The local building official documenting that the facility meets local building codes for occupancy; (3-15-22)
- iii. The local fire official documenting that the facility meets local fire codes for occupancy. (3-15-22)

**02. Written Request for Building Evaluation.** The applicant must request in writing to the Licensing Agency for a building evaluation of existing buildings. The request must include the physical address of the building that is to be evaluated and the name, address, and telephone number of the person who is to receive the building evaluation report. (3-15-22)

**03. Building Evaluation Fee.** This application and request must be accompanied by a five hundred dollar (\$500) initial building evaluation fee. (3-15-22)

**04. Identification of the Licensed Administrator.** The applicant must provide a copy of the administrator's license and criminal history background check, and the current address for the primary residence of the administrator. (3-15-22)

**05. Failure to Complete Application Process.** Failure of the applicant to complete the Licensing Agency's application process within six (6) months of the original date of application, may result in a denial of the application. If the application is denied, the applicant is required to initiate a new licensing application process. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR.**

Under Section 39-3321, Idaho Code, each facility must have one (1) licensed administrator assigned as the person responsible for the day-to-day operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation for up to three (3) buildings with a total of no more than fifty (50) beds, or up to two (2) buildings with a total of no more than eighty (80) beds. The criteria and procedure for requesting to have multiple facilities under one (1) administrator is posted on the Residential Assisted Living Facilities Program website. (3-15-22)

**01. Administrator Responsibility.** The administrator is responsible for ensuring that policies and procedures are developed and implemented to fulfill the requirements in Title 39, Chapter 33, Idaho Code, and IDAPA 16.03.22, "Residential Assisted Living Facilities." (3-15-22)

**02. Availability of Administrator.** The facility's administrator must be on-site sufficiently to ensure safe and adequate care of the residents. The facility's administrator or their designee must be available to be on-site at the facility within two (2) hours. The facility must continuously employ an administrator. (3-15-22)

**03. Lapse of Administrator.** If the facility operates for more than thirty (30) days without a licensed administrator, it will result in a core issue deficiency. (3-15-22)

**04. Representation of Residents.** The owner or administrator, their relatives, and employees cannot act as, or seek to become the legal guardian of, or have power of attorney for any resident. Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be obtained, are permitted. (3-15-22)

**05. Responsibility for Acceptable Admissions.** The administrator must ensure that no resident is knowingly admitted or retained who requires care as defined in Section 39-3307, Idaho Code, and Section 152 of these rules. (3-15-22)

**06. Sexual Offender.** The administrator must ensure that a nonresident on the sexual offender registry is not allowed to live or work in the facility. (3-15-22)

**07. Notification to Adult Protection and Law Enforcement.** The administrator must ensure that adult protection and law enforcement are notified in accordance with Sections 39-5303 and 39-5310, Idaho Code. (3-15-22)

**08. Procedures for Investigations.** The administrator must ensure the facility procedures for investigation of complaints, incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to ensure resident safety. Procedures must include: (3-15-22)

**a. Administrator Notification.** The administrator, or person designated by the administrator, must be notified of all incidents, accidents, allegations of abuse, neglect, or exploitation immediately, and notified of complaints within one (1) business day. (3-15-22)

**b. Investigation within Thirty Days.** The administrator or designee must complete an investigation and written report of the findings within thirty (30) calendar days for each accident, incident, complaint, or allegation of abuse, neglect, or exploitation. (3-15-22)

**c. Resident Protection.** Any resident involved must be protected during the course of the investigation. (3-15-22)

**d. Written Response to Complaint within Thirty Days.** The person making the complaint must receive a written response from the facility of the action taken to resolve the matter, or the reason why no action was taken within thirty (30) days of the complaint. (3-15-22)

**e. Corrective Action.** When abuse, neglect, exploitation, incidents, and accidents occur, corrective action must be immediately taken and monitored to ensure the problem does not recur. (3-15-22)

**f. Notification to Licensing Agency within One Business Day.** When a reportable incident occurs, the administrator or designee must notify the Licensing Agency within one (1) business day of the incident. (3-15-22)

**g. Identify and Monitor Patterns.** The administrator or designee must identify and monitor patterns of accidents, incidents, or complaints and must develop interventions to prevent recurrences. (3-15-22)

**09. Administrator's Designee.** A person authorized in writing to act in the absence of the administrator. An administrator's designee may act in the absence of the administrator for no longer than thirty (30) consecutive days when the administrator is on vacation, has days off, is ill, or is away for training or meetings. (3-15-22)

**10. Ability to Reach Administrator or Designee.** The administrator or their designee must be reachable and available at all times. (3-15-22)

**11. Minimum Age of Personnel.** The administrator will ensure that no personnel providing hands-on care or supervision services will be under ~~eighteen~~ ~~seventeen~~ (18~~7~~) years of age unless they have completed a certified nursing assistant (CNA) certification course. (3-15-22)( )

**12. Notification to Licensing Agency.** The facility must notify the Licensing Agency, in writing, within three (3) business days of a change of administrator. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**930. ENFORCEMENT ACTION OF TEMPORARY MANAGEMENT.**

**01. Need for Temporary Management.** The Department may impose the action of temporary management in situations where there is a need to oversee operation of the facility and to ensure the health and safety of the facility's residents: (3-15-22)

**a.** During an orderly transfer of residents of the facility to other facilities; or (3-15-22)

**b.** Pending improvements to bring the facility into compliance with program requirements. (3-15-22)

**02. Notice of Temporary Management.** The Department will give written notice to the facility of the imposition of temporary management. (3-15-22)

**03. Who May Serve as a Temporary Manager.** The Department may appoint any person or organization that meets the following qualifications: (3-15-22)

**a.** The temporary manager must not have any financial interest in the facility to be managed; (3-15-22)

**b.** The temporary manager must not be related, within the first degree of kinship, to the facility's owner, manager, administrator, or other management principal; (3-15-22)

**c.** The temporary manager must possess sufficient training, expertise, and experience in the operation of a facility as would be necessary to achieve the objectives of temporary management. If the temporary manager is to serve in a facility, the manager must possess an Residential Assisted Living Administrator's license; and (3-15-22)

**d.** The temporary manager must not be an existing competitor of the facility who would gain an unfair competitive advantage by being appointed as temporary manager of the facility. (3-15-22)

**04. Powers and Duties of the Temporary Manager.** The temporary manager has the authority to direct and oversee the management, and to hire and discharge any consultant or personnel, including the administrator of the facility. The temporary manager has the authority to direct the expenditure of the revenues of the facility in a reasonable and prudent manner, to oversee the continuation of the business and the care of the residents, to oversee and direct those acts necessary to accomplish the goals of the program requirements, and to direct and oversee regular accounting. When the facility fails or refuses to carry out the directions of the temporary manager, the Department ~~will~~ may revoke the facility's license. (3-15-22)( )

**a.** The temporary manager must observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager must make reports to the Department; (3-15-22)

**b.** The temporary manager may be liable for gross, willful or wanton negligence, intentional acts of omissions, unexplained shortfalls in the facility's fund, and breaches of fiduciary duty; (3-15-22)

**c.** The temporary manager does not have authority to cause or direct the facility, its owner, or administrator to incur debt, unless to bring the facility into compliance with these rules, or to enter into any contract with a duration beyond the term of the temporary management of the facility; (3-15-22)

**d.** The temporary manager does not have authority to incur, without the permission of the owner, administrator, or the Department, capital expenditures in excess of two thousand dollars (\$2,000), unless the capital expenditures are directly related to correcting the identified deficiencies; (3-15-22)

**e.** The temporary manager does not have authority to cause or direct the facility to encumber its assets or receivables; (3-15-22)

**f.** The temporary manager does not have authority to cause or direct a facility, which holds liability or casualty insurance coverage, to cancel or reduce its liability or casualty insurance coverage; and (3-15-22)



**g.** The temporary manager does not have authority to cause or direct the sale of the facility, its assets or the premises on which it is located. (3-15-22)

**05. Responsibility for Payment of the Temporary Manager.** All compensation and per diem costs of the temporary manager must be paid by the licensee. (3-15-22)

**06. Termination of Temporary Management.** A temporary manager may be replaced under the following conditions: (3-15-22)

**a.** The Department may require replacement of any temporary manager whose performance is deemed unsatisfactory by the Department. No formal procedure is required for such removal or replacement, but written notice of any action will be given to the facility. (3-15-22)

**b.** A facility subject to temporary management may petition the Department for replacement of a temporary manager whose performance it considers unsatisfactory. The petition must include why the replacement of a temporary manager is necessary or appropriate. (3-15-22)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.06.01 – CHILD AND FAMILY SERVICES**

**DOCKET NO. 16-0601-2301**

**NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2023.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 16-1629, 16-1623, 16-2102, 16-2406, 16-2423, and 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>VIRTUAL TELECONFERENCES Via WebEx</b>
<p><b>Tuesday, July 18, 2023</b> <b>6:00 p.m. - 7:00 p.m. (MT)</b></p>
<p><b>Join from the meeting link</b> <a href="https://idhw.webex.com/idhw/j.php?MTID=mc7d53907650200da9d06e6be05c3454e">https://idhw.webex.com/idhw/j.php?MTID=mc7d53907650200da9d06e6be05c3454e</a></p> <p><b>Join by meeting number</b> <b>Meeting number (access code): 2760 984 7541</b> <b>Meeting password: pyNdh2pBp33 (79634272 from phones and video systems)</b></p> <p><b>Join by phone</b> <b>+1-415-527-5035 United States Toll</b> <b>+1-303-498-7536 United States Toll (Denver)</b></p>
<p><b>Monday, July 24, 2023</b> <b>12:00 p.m. - 1:00 p.m. (MT)</b></p>
<p><b>Join from the meeting link</b> <a href="https://idhw.webex.com/idhw/j.php?MTID=m812a3317a64004e88b620790a38ceb4a">https://idhw.webex.com/idhw/j.php?MTID=m812a3317a64004e88b620790a38ceb4a</a></p> <p><b>Join by meeting number</b> <b>Meeting number (access code): 2761 427 2715</b> <b>Meeting password: reSu3V35pYK (73783835 from phones and video systems)</b></p> <p><b>Join by phone</b> <b>+1-415-527-5035 United States Toll</b> <b>+1-303-498-7536 United States Toll (Denver)</b></p>

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. Each meeting will conclude after 30 minutes if no participants sign into the meeting.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under the Adoption Section there is clear language that outlines that only social workers are responsible for assisting children in processing grief and loss as a result of their separation from their parents. Language specific to “social workers” needs to be modified to include family services workers, which includes licensed and non-licensed social workers and individuals with a human services degree. This change aligns with current staffing and practices and allows all Department staff who fall under the definition of “family services worker” (who maintains case planning and case management responsibilities) the authority to complete monthly contacts with children in foster care as required by the Social Security Act §422(b)(17) and §424(f).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1) Section (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This change is necessary for the protection of the public health, safety, or welfare of citizens utilizing the services in family services and clarifies rule to align with current practice.

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

There are no associated fee changes due to the Temporary and Proposed rule changes in this rulemaking.

**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:

This rulemaking is not anticipated to have any fiscal impact on the State Funds, General Funds, or any other known funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are simple, align with current practices, and clarifies processes in 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:

There are no incorporation by reference changes included in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sabrina Brown, 208-850-5662.

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 July 26, 2023.

DATED this 26th day of May, 2023.

Trinette Middlebrook and Frank Powell  
DHW - Administrative Rules Unit  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5500 phone  
(208) 334-6558 fax  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov) email

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0601-2301  
(Only Those Sections With Amendments Are Shown.)**

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**

For the purposes of these rules, the following terms are used: (3-15-22)

**01. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (3-15-22)

**02. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-15-22)

**03. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (3-15-22)

**04. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-15-22)

**05. Family Services Worker.** ~~Any of the direct service~~ Case carrying personnel, ~~including social workers,~~ working in regional Child and Family Services Programs. (3-15-22)(8-1-23)T

**06. Federally-Funded Guardianship Assistance for Relatives.** Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (3-15-22)

**07. Field Office.** A Department of Health and Welfare service delivery site. (3-15-22)

**08. Goal.** A statement of the long-term outcome or plan for the child and family. (3-15-22)

**09. Independent Living.** Services provided to eligible foster or former foster youth, ages fourteen (14) to twenty-three (23), designed to support a successful transition to adulthood. (3-15-22)

**10. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-15-22)

**11. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-15-22)

**a.** A member of an Indian tribe; or (3-15-22)

**b.** Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. (3-15-22)

**12. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-15-22)

**13. Indian Child's Tribe.** (3-15-22)

- a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-15-22)
- b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-15-22)

**14. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-15-22)

**15. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (3-15-22)

**16. Interethnic Adoption Provisions of 1996 (IEP).** IEP prohibits delaying or denying the placement of a child for adoption or foster care on race, color or national origin of the adoptive or foster parent(s), or the child involved. (3-15-22)

**17. Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Title 16, Chapter 21, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-15-22)

**18. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-15-22)

**012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.**

For the purposes of these rules, the following terms are used: (3-15-22)

**01. Legal Guardianship.** A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative. (3-15-22)

**02. Licensed.** Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Child Care Licensing." (3-15-22)

**03. Licensing.** See IDAPA 16.06.02, "Child Care Licensing," Section 100. (3-15-22)

**04. Medicaid.** See "Title XIX." (3-15-22)

**05. Multiethnic Placement Act of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-15-22)

**06. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term "legal guardian" is not included in the definition of parent. (3-15-22)

**07. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-15-22)

**08. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-15-22)

**09. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980."

(3-15-22)

**10. P.L. 105-89.** Public Law 105-89, the federal “Adoptions and Safe Families Act of 1997,” amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-15-22)

**11. Planning.** An orderly rational process that results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-15-22)

**12. Qualified Expert Witness--ICWA.** An individual who is an expert regarding tribal customs pertaining to family organization and child rearing practice, and is qualified to render an opinion as to whether continued custody of the child by the parent(s), or Indian custodian(s), is likely to result in serious emotional or physical damage to the child. (3-15-22)

**13. Relative.** Person related to a child by blood, marriage, or adoption. (3-15-22)

**14. Relative Guardian.** A relative who is appointed a child’s legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. (3-15-22)

**15. Reservation.** A reservation is an area of land “reserved” by or for an Indian band, village, or tribe(s) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations. (3-15-22)

**16. Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances that require short term, temporary care of a child by a licensed or agency-approved caregiver different from their usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (3-15-22)

~~**17. Responsible Party.** A Department social worker, clinician, or service provider who maintains responsibility and authority for case planning and case management. (3-15-22)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. ALTERNATE CARE CASE MANAGEMENT.**

Case management must continue while the child is in alternate care and must ensure the following: (3-15-22)

**01. Preparation for Placement.** Preparing a child for placement in alternate care is the joint responsibility of the child’s family, the child (when appropriate), the family services worker, and the alternate care provider. (3-15-22)

**02. Information for Alternate Care Provider.** The Department and the family have informed the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (3-15-22)

**a.** Any medical, health and dental needs of the child including the names and address of the child’s health and educational providers, a record of the child’s immunizations, the child’s current medications, the child’s known medical problems, and any other pertinent health information concerning the child; (3-15-22)

**b.** The name of the child’s doctor; (3-15-22)

**c.** The child’s current functioning and behaviors; (3-15-22)

**d.** A copy of the child's portion of the service plan including any visitation arrangements; (3-15-22)

**e.** The case history of the child, including the reason the child came into foster care, the child’s legal

status, and the permanency goal for the child; (3-15-22)

f. A history of the child's previous placements and reasons for placement changes, excluding information that identifies or reveals the location of any previous alternate care providers without their consent; (3-15-22)

g. The child's cultural and racial identity; (3-15-22)

h. Any educational, developmental, or special needs of the child; (3-15-22)

i. The child's interest and talents; (3-15-22)

j. The child's attachment to current caretakers; (3-15-22)

k. The individualized and unique needs of the child; (3-15-22)

l. Procedures to follow in case of emergency; and (3-15-22)

m. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-15-22)

**03. Consent for Medical Care.** Parent(s) or legal guardian(s) have signed a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. (3-15-22)

**04. Financial Arrangements.** The family services worker must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-15-22)

**05. Contact with Child.** The family, the family services worker, and the alternate care provider have established a schedule for frequent and regular visits with the child by the family and by the family services worker or designee. (3-15-22)

a. Face-to-face contact with a child by the ~~responsible party~~ **assigned family services worker** must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the ~~responsible party~~ **assigned family services worker** and the child occurs where the child resides a minimum of once every sixty (60) days. (3-15-22)(8-1-23)T

b. The Department will have strategies in place to detect abuse, neglect, or abandonment of children in alternate care. (3-15-22)

~~e. Face-to-face contact between the responsible party and a child placed in an in-state group or residential care facility, located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (3-15-22)~~

~~d.c.~~ Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures, and the use of video and other technology as may be relevant and available. (3-15-22)

~~e. Children who are in out of state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either. Idaho will request the state in which the child is placed to have face to face contact with the child on a monthly basis. If the policy of the state in which the child is placed allows only for face-to-face contact~~

~~every six (6) months, the responsible party in Idaho will contact the child and the child's caregiver each month by phone to confirm the child's safety and well being.~~ (3-15-22)

**06. Discharge Planning.** Planning for discharge from alternate care are developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-15-22)

**07. Transition Planning.** Planning for discharge from alternate care into a permanent placement are developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-15-22)

**08. Financial and Support Services.** As part of the discharge planning, Departmental resources are coordinated to expedite access to Department financial and medical assistance and community support services. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. SERVICES TO BE PROVIDED IN ADOPTIONS.**

In addition to the core services provided under these rules, the Department must assure provision of the following: (3-15-22)

**01. Response to Inquiries.** Written or personal inquiries from prospective adoptive families must be answered within two (2) weeks. (3-15-22)

**02. Pre-Placement Child/Family Assessment.** An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (3-15-22)

**03. Compliance with Multi-Ethnic Placement Act and Interethnic Adoption Provisions.** Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act and Interethnic Adoption Provisions, if the child is not an Indian. (3-15-22)

**04. (Pre-Placement) Home Study.** An adoptive home study to ensure selection of an appropriate adoptive home. (3-15-22)

**05. Preparation for Placement.** Preparation of the child by an assigned ~~social worker~~ family services worker who will assist the child in addressing anticipated grief and loss due to separation from their parents and assisting the child with the transition into an adoptive home. ~~(3-15-22)~~ (8-1-23)T

**06. Technical Assistance.** Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (3-15-22)

**07. Adoption Assistance.** A determination of eligibility for adoption assistance must be made for each child placed for adoption through the Department prior to the finalization of their adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test may be applied to the adoptive family's income or resources. Once eligibility is established, the Division will negotiate a written agreement with the adoptive family. The agreement must be fully executed by all parties prior to the finalization of the adoption in order to be valid. (3-15-22)

**08. Period of Support Supervision.** Once a child is placed with an adoptive family, a period of support and supervision by the Department lasting at least six (6) months must be completed prior to the finalization of the adoption. If the child has been a foster child placed with the family for a period of at least six (6) months, the family may submit a written request to the Department's Child and Family Services Program Manager to reduce the supervisory period to a minimum of three (3) months. (3-15-22)



**09. Post Adoption Services.** Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements, whether from Idaho or from another state, are eligible for any services available to Idaho children. International adoptees residing in Idaho are also eligible for any services available to Idaho children under the Inter-Country Adoption of 2000 (P.L.106-279). Children with either IV-E or state adoption assistance agreements are eligible for Medicaid in Idaho. A referral from an Interstate Compact on Adoption and Medical Assistance member state will serve as a formal application for services in Idaho. Applications for Medicaid are made through the Department in accordance with IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” (3-15-22)