

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 16.04.18 - Children's Agencies and Residential Licensing - Temporary and Proposed Rule
(Docket No. 16-0418-2301).

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 07/17/2023. 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 08/14/2023.

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 Kondeff
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: June 28, 2023
SUBJECT: Department of Health and Welfare

IDAPA 16.04.18 - Children's Agencies and Residential Licensing - Temporary and Proposed Rule (Docket No. 16-0418-2301)

Summary and Stated Reasons for the Rule

This temporary and proposed rule revises rules regarding background check requirements for children's agencies and residential licensing in order to conform to federal law. Specifically, the new language clarifies the classes of individuals subject to background checks. The temporary and proposed rule also includes some technical corrections.

Negotiated Rulemaking / Fiscal Impact / Justification for Temporary Rule

Negotiated rulemaking was not conducted based on the nature of the rule change, which is to comply with an FBI request for clarity in the rule as required by federal law. There is no anticipated negative impact on the state general fund.

The Governor finds that the temporary rule is justified in order to comply with an FBI request to conform the rule to federal law.

Statutory Authority

This rule appears to be authorized by Chapter 12, Title 39, Idaho Code.

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.

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

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.04.18 – CHILDREN’S AGENCIES AND RESIDENTIAL LICENSING
DOCKET NO. 16-0418-2301
NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 6, 2023 (Sine Die).

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 39-1207, 39-1208, 39-1209, 39-1210, 39-1213, 56-1003, 56-1004A, and 56-1005(8).

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

VIRTUAL TELECONFERENCES Via WebEx
Wednesday, May 10, 2023 10:00 a.m. - 11:00 a.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=m0142248d5b3168792dade6300059ff38
Join by meeting number Meeting number (access code): 2764 520 0612 Meeting password: 6pKxZeZct28 (67599392 from phones and video systems)
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)
Wednesday, May 17, 2023 10:00 a.m. - 11:00 a.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=m74191cf2d5548775efcaf7928ced5954
Join by meeting number Meeting number (access code): 2764 726 9065 Meeting password: XNgj9yP3b8E (96459973 from phones and video systems)
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

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 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:

The Federal Bureau of Investigation (FBI) Criminal Justice Information Law Unit denied the background clearance information in the current set of rules within 16.04.18, "Children's Agencies and Residential Licensing," based on their interpretation of Pub. L. 92-544. The revised language follows the current FBI guidance to identify and clarify specific actual classes of individuals subject to a Department background checks.

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

This temporary rulemaking is to align with the Federal Bureau of Investigation (FBI) request to allow the Department the ability to submit background checks through the FBI database(s).

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

There is no fee or charge imposed with 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:

There is no anticipated impact to the state General Fund, any dedicated fund, or federal fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted to comply with the Federal Bureau of Investigation (FBI) Criminal Justice Information Law Unit's request to clarify the classes of individuals subject to background checks within this chapter 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:

There is no change to an incorporation by reference associated with this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ms. Frede' Teske at 208-334-0649.

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 May 24, 2023.

DATED this 7th day of April, 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
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0418-2301

000. LEGAL AUTHORITY.

Sections 39-1207, 39-1208, 39-1209, 39-1210, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code, authorizes the Department and the ~~Idaho~~ Board of Health and Welfare to adopt and enforce rules for licensing ~~children's agencies, children's residential care facilities, and children's therapeutic outdoor programs~~ these organizations. (4-6-23)(4-6-23)T

001. SCOPE AND POLICY.

~~01. Scope. These rules establish requirements for licensing, maintaining, and operating the following facilities or programs in Idaho:~~ (4-6-23)

~~a. Children's agencies;~~ (4-6-23)

~~b. Children's residential care facilities; and~~ (4-6-23)

~~c. Children's therapeutic outdoor programs.~~ (4-6-23)

~~02. Policy. The Department will assure that Idaho children receive adequate substitute parental care in case of absent parents, or the temporary or permanent inability of parents to provide care and protection, or if parents are seeking alternative twenty-four (24) hour care for their children.~~ (4-6-23)

0021. – 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance ~~with Background Check.~~ Background checks are required for individuals ~~who are~~ licensed under these rules and must comply with IDAPA 16.05.06, "Criminal History and Background Checks," except for those individuals under Subsection 009.03 of this rule. (4-6-23)(4-6-23)T

02. Individuals Subject to Background Check Requirements. The following individuals must receive a ~~background~~ clearance ~~according to~~ under IDAPA 16.05.06, "Criminal History and Background Checks:" (4-6-23)(4-6-23)T

~~a. Contract employees or volunteers that have unsupervised time with children;~~ Adoptive parents and any other adult residing in the home at any time during the adoption process. (4-6-23)(4-6-23)T

~~b. Any adult living on the premises;~~ (4-6-23)

~~c. Adoptive Parents;~~ (4-6-23)

~~d. Agency Licensed Foster Parents.~~ (4-6-23)

~~eh.~~ Children's Agency Facility Staff Agencies; (4-6-23)(4-6-23)T

i. Chief Administrator; (4-6-23)T

ii. Case Manager Supervisor; (4-6-23)T

iii. Case Manager; (4-6-23)T

iv. Support Staff; and (4-6-23)T

v. Contractors and volunteers that have unsupervised time with children. (4-6-23)T

- ~~f.c.~~ Children's Residential Care ~~Facility Staff; and~~ Facilities: ~~(4-6-23)~~(4-6-23)T
 - ~~i.~~ Owners: (4-6-23)T
 - ~~ii.~~ Chief Administrator: (4-6-23)T
 - ~~iii.~~ Medical Professional: (4-6-23)T
 - ~~iv.~~ Licensed Treatment Professional: (4-6-23)T
 - ~~v.~~ Case Manager Supervisor: (4-6-23)T
 - ~~vi.~~ Case Manager: (4-6-23)T
 - ~~vii.~~ Support Staff: (4-6-23)T
 - ~~viii.~~ Direct Care Staff Supervisor: (4-6-23)T
 - ~~ix.~~ Direct Care Staff: (4-6-23)T
 - ~~x.~~ Teacher; and (4-6-23)T
 - ~~xi.~~ Contractors and volunteers that have unsupervised time with children. (4-6-23)T
 - ~~g.d.~~ Children's Therapeutic Outdoor Programs ~~Staff:~~ Staff: ~~(4-6-23)~~(4-6-23)T
 - ~~i.~~ Owners: (4-6-23)T
 - ~~ii.~~ Chief Administrator: (4-6-23)T
 - ~~iii.~~ Field Director: (4-6-23)T
 - ~~iv.~~ Licensed Treatment Professional: (4-6-23)T
 - ~~v.~~ Senior Field Staff: (4-6-23)T
 - ~~vi.~~ Field Staff: (4-6-23)T
 - ~~vii.~~ Intern: (4-6-23)T
 - ~~viii.~~ Support Staff; and (4-6-23)T
 - ~~ix.~~ Contractors and volunteers that have unsupervised time with children. (4-6-23)T
- 03. Exceptions to ~~Background Checks~~ Clearance Requirement. ~~Background checks are optional for:~~ Children's residential care facilities have discretion whether to require a clearance for any individual covered in Subsection 009.02 of this rule who has duties or performs tasks that do not involve contact with a child or their personal belongings. ~~(4-6-23)~~(4-6-23)T**
- ~~a.~~ Youth in foster care who reach eighteen (18) years old and continue to reside in the same licensed foster home. (4-6-23)
 - ~~b.~~ Youth in a children's residential care facility who reach eighteen (18) years old who continue to live in the same licensed residential facility. (4-6-23)
 - ~~c.~~ Any employee, contractor, or volunteer of an organization who does not have access to a child

~~living in a residential care facility, and who has duties or performs tasks that do not involve contact with a child or their personal belongings.~~ (4-6-23)

010. DEFINITIONS A THROUGH M.

01. Chief Administrator. The duly authorized representative or designee of an organization responsible for day-to-day operations, management, and compliance with these rules and Title 39, Chapter 12, Idaho Code. (4-6-23)

02. Child. Under Title 39, Chapter 12, Idaho Code, a "child" is an individual less than eighteen (18) years old, synonymous ~~with juvenile or~~ minor. (4-6-23)(4-6-23)T

03. Child Care. The care, control, supervision, or maintenance of a child for twenty-four (24) hours a day provided as an alternative to parental care. (4-6-23)

04. Children's Agency. A business for the placement of children in foster homes or for adoption and who does not provide child care as part of that business. A children's agency includes those providing home studies, post-placement supervision, post-finalization services, and other domestic and international adoptive services under Title 39, Chapter 1202(4), Idaho Code. A children's agency does not include an Idaho certified adoption specialist. (4-6-23)

05. Children's Camp. A program of child care at a location away from the child's home that is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy, or rehabilitation for the child. (4-6-23)

06. Children's Residential Care Facility. A children's institution as defined in Section 39-1202(6), Idaho Code, but excluding foster homes, children's therapeutic outdoor programs, accredited residential schools, and children's camps if the camps provide child care for less than nine (9) consecutive weeks in any one (1) year period. (4-6-23)

07. Children's Therapeutic Outdoor Program. A program that provides child care designed to provide behavioral, substance abuse, or mental health services to children in an outdoor setting. Also known as "outdoor program." (4-6-23)

~~**08. Continued Care.** The ongoing placement of an individual who reaches the age of eighteen (18) years but is less than twenty-one (21) years old.~~ (4-6-23)

~~**09.**~~ **008. Department.** The Idaho Department of Health and Welfare, the Department Director, or designee. (4-6-23)

~~**109.**~~ **Direct Care Staff.** An employee who has direct personal interaction with children in the supervision of child care. (4-6-23)

~~**110.**~~ **Disrupted Placement.** When a child is discharged by the organization based on the child's behaviors, or when a child is removed from an adoptive placement before the adoption is finalized. (4-6-23)

~~**121.**~~ **Governmental Unit.** The State of Idaho, any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. (4-6-23)

~~**132.**~~ **Intercountry Adoption.** The placement of a child from one (1) country to another for the purpose of adoption. (4-6-23)

~~**143.**~~ **Mechanical Restraint.** Devices used to restrict a person's free movement. (4-6-23)

~~**154.**~~ **Medical Professional.** Person who received a degree in nursing or medicine and is licensed as a nurse, licensed nurse practitioner, physician's assistant, or medical doctor. (4-6-23)

011. DEFINITIONS N THROUGH Z.

01. Nonaccredited Residential School. A residential school for any number of children that is not certified or accredited pursuant to Section 39-1207, Idaho Code, or has lost accreditation and is subject to the jurisdiction of the Department as a children's residential care facility pursuant to Section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho Department of Education. (4-6-23)

~~02. **Noncompliance.** Violation of, or inability to meet, the requirements of these rules or the terms of licensure. (4-6-23)~~

~~03. **Operator.** An individual who operates or maintains within Idaho a children's residential care facility, children's agency, or outdoor program. (4-6-23)~~

~~04. **Organization.** A children's agency, a children's residential care facility, or an outdoor program. (4-6-23)~~

~~05. **Person.** Any individual, association, partnership, corporation, or any group thereof. (4-6-23)~~

~~06. **Physical Restraint Intervention.** Any intervention utilized to control the range and motion of an individual, including an escort, to assist a child in moving from one location to another. (4-6-23)~~

~~07. **Placement.** The activities and arrangements related to finding a suitable home or facility for a child. (4-6-23)~~

~~08. **Plan of Correction.** The detailed procedures developed between the Department and an organization required to bring the organization into compliance. (4-6-23)~~

~~09. **Residential School.** A residential facility for children that provides services substantially comparable to those provided in nonresidential public schools where the primary purpose is the education and academic pursuits of the students. All additional provisions of Section 39-1202(23), Idaho Code, also apply in defining "Residential School". (4-6-23)~~

~~10. **Seclusion.** A room within a facility designed to temporarily isolate an individual to gain emotional or physical control by means of structure and minimal stimulation. (4-6-23)~~

~~11. **Staff-Child Ratio.** The maximum number of children allowed under the care and supervision of one (1) staff. (4-6-23)~~

~~12. **Substance Abuse Treatment Facility.** A licensed children's residential care facility participating in the public Substance use Disorder (SUD) system specializing in providing programs of treatment for children whose primary problem is alcohol or drug abuse, under IDAPA 16.07.17, "Substance Use Disorders Services." Private pay children's residential care facilities must utilize licensed professionals under IDAPA 16.07.17 to provide specialized treatment for children whose primary problem is alcohol or drug abuse. (4-6-23)~~

~~13. **Supervision.** Monitoring a child based on their individual needs to provide for their safety and protection. (4-6-23)~~

~~14. **Support Staff.** Any employee of an organization that provides food service, transportation service, maintenance service, housekeeping service, or administrative support. (4-6-23)~~

~~15. **Time-Out.** Separation of a child from an activity as a means of behavior management. (4-6-23)~~

~~16. **Training.** Instruction related to child care that increases knowledge, skill, and abilities. (4-6-23)~~

012. – 099. (RESERVED)

LICENSING AND CERTIFICATION
Sections 100 – 199

100. LICENSING.

~~These rules set requirements and monitor compliance.~~ (4-6-23)

~~01. Operator Responsibilities. The operator must conform to the terms of the license.~~ (4-6-23)

021. Knowledge of Standards. The operator is responsible for knowing and always complying with the rules regulating the license. The operator is responsible for ensuring that staff are familiar with the rules governing their organization. (4-6-23)

032. Voluntary Closure. The operator must notify the Department of any voluntary closure prior to the closure date. (4-6-23)

043. Voluntary Withdrawal of License. The Department will withdraw the license of an organization that has not provided services in the last licensed year. (4-6-23)

054. Operating Without a License. If children are found in an unlicensed organization, the Department will refer to law enforcement or Child Protective Services if it has been determined that an immediate threat to the children's health and safety exists; (4-6-23)

~~06. Operating an Unlicensed Organization. Operating an unlicensed organization is a misdemeanor under Sections 39-1220 and 39-1221, Idaho Code.~~ (4-6-23)

075. Exceptions and Exemptions. Under Sections 39-1206 and 39-1211, Idaho Code, these rules do not apply to: (4-6-23)

a. The occasional or irregular care of a neighbor's, relative's or friend's child or children by a person not ordinarily engaged in child care; or (4-6-23)

b. Children's camps that only provide child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period. A children's camp that provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children's residential care facility and is subject to these rules. A children's camp that also constitutes a residential school must be governed as a residential school. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

102. DISPOSITION OF APPLICATIONS.

After receipt of a completed application that addresses each requirement for the organization, the Department will review the materials for compliance with these rules and will act on the application within thirty (30) days after receipt of the completed application. (4-6-23)

01. Application Approval. A license will be issued to any organization in compliance with these rules. The license is issued under the terms specified in the licensing survey and will be sent to the applicant. (4-6-23)

02. License. A license will be issued to any organization in compliance with these rules and will specify the terms of licensure, such as: (4-6-23)

a. Capacity, age range, and gender; (4-6-23)

b. Specific services under the approved program description; and (4-6-23)

- c. Effective up to twelve (12) months from the date of issuance unless suspended or revoked earlier. (4-6-23)

03. Variance. A license will be issued to an organization that has been approved for a variance through the Department-approved process, under Section 67-5230, Idaho Code. Variances must be approved annually. (4-6-23)

04. Provisional License ~~for Idaho Licensed Organizations~~. A provisional license may be issued to an organization when a licensing standard is not met but can be expected to be corrected within six (6) months of issuing the provisional license, provided this does not endanger the health, safety, and well-being of any child in care or who may come into care during the period of the provisional license. A provisional license will be issued according to Section 39-1216, Idaho Code. ~~(4-6-23)~~(4-6-23)T

05. Denial of Application. If an application is denied, notification will be sent to the applicant stating the basis for such denial. (4-6-23)

06. ~~Failure to C~~Incomplete Application Process. Failure of the applicant to progress in the application process will result in a denial of the application. ~~(4-6-23)~~(4-6-23)T

(BREAK IN CONTINUITY OF SECTIONS)

106. COMPLAINT INVESTIGATION.

The Department will investigate complaints ~~which may include further contact with the complainant, scheduled or unannounced visits to the organization, review of records, and collateral contacts including interviews and review of records with any persons who may have knowledge of the complaint~~ and has the discretion to decide which methods and tasks of investigation to employ. Onsite investigations can be unannounced and without prior notice. ~~(4-6-23)~~(4-6-23)T

(BREAK IN CONTINUITY OF SECTIONS)

108. NONRENEWAL, DENIAL, REVOCATION, OR SUSPENSION OF LICENSE.

If, upon investigation, it is found that an applicant or operator has failed or refused to comply with the provisions of the Child Care Licensing Reform Act, ~~Sections 39-1201 through 39-1224~~ Title 39, Chapter 12, Idaho Code, or with these rules, or with any provision of the license, the Department may deny, suspend, revoke, or not renew a license. The Department may also deny, suspend, revoke, or deny renewal of a license for any organization when the following is determined: ~~(4-6-23)~~(4-6-23)T

01. Criminal Conviction or Relevant Record. Anyone providing direct care or working onsite under these rules is denied background clearance or refuses to comply with requirements in IDAPA 16.05.06, "Criminal History and Background Checks." (4-6-23)

02. Other Misconduct. The applicant, operator, or the chief administrator: (4-6-23)

a. Fails to furnish any data, statistics, records, or information requested by the Department without good cause or provides false information. (4-6-23)

b. Has been found guilty of, or is under investigation for, fraud, deceit, misrepresentation, or dishonesty with the operation of the organization. (4-6-23)

c. Has been found guilty of, or is under investigation for, the commission of any felony. (4-6-23)

d. Has knowingly permitted, aided, or abetted the commission of any illegal act. (4-6-23)

- 03. Transfer of Children.** May occur under the following circumstances: (4-6-23)
- a.** Any condition that endangers the health or safety of any resident or child. (4-6-23)
 - b.** An organization is not in substantial compliance with, or has repeat violations of, these rules. (4-6-23)
 - c.** An organization has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction. (4-6-23)
 - d.** An organization has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a license. (4-6-23)
 - e.** Refusal to allow Department full access to the organization's grounds, facilities, and records. (4-6-23)
 - f.** An organization has violated the terms or conditions of a provisional license. (4-6-23)