

Dear Senators HEIDER, Nuxoll, Schmidt, and
Representatives WOOD, Packer, Rusche:

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 - (Fee Rule) Proposed Rule (Docket
No. 16-0506-1602).

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 10/18/2016. 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 11/15/2016.

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 334-4834, 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: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: September 30, 2016

SUBJECT: Department of Health and Welfare

IDAPA 16.05.06 - Criminal History and Background Checks - (Fee Rule) Proposed Rule (Docket No. 16-0506-1602)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.05.06. The purpose of the rule is to revise existing rules regarding criminal history and background checks for persons who provide care or services to vulnerable adults or children, in order to conform the rules to federal and state law. Specifically, the list of crimes that would disqualify persons from licensing or certification for certain jobs has been amended to include various crimes against vulnerable adults, human trafficking, ritualized abuse of a child, felony sexual exploitation of a child, attempted strangulation, and domestic violence, among other offenses. Additional changes to the rules include an increase in fees for certain applicants; the increase would cover fees charged by other states to access their records.

Negotiated rulemaking was conducted. Implementation of the rule is anticipated to cost \$85,150.00 for a computer system upgrade; this cost is covered by the Department's existing appropriation. There is no expected additional impact to the state general fund. The Department states that this rulemaking is authorized pursuant to several sections of the Idaho Code, notably Section 56-202(b), which authorizes rulemaking; and Section 56-1004A, which authorizes the Department to conduct criminal history and background checks.

cc: Department of Health and Welfare
Tamara Prisock

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1602 (FEE RULE)

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.

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

Wednesday September 7, 2016 1:00 pm (Local)	Thursday September 8, 2016 1:00 pm (Local)	Monday September 12, 2016 1:00 pm (Local)
Region 1 - Coeur d'Alene 1120 Ironwood Dr., Con. Rm. 118 Coeur d'Alene, ID	Lewiston Community Center 1424 Main Street Lewiston, ID	Region 3 - DHW Offices 3402 Franklin Rd Caldwell, ID
Tuesday September 13, 2016 1:00 pm (Local)	Wednesday September 14, 2016 1:00 pm (Local)	Monday September 19, 2016 1:00 pm (Local)
Region 4 - DHW Offices 1720 N. Westgate Dr. Boise, ID	Region 5 - DHW Offices 601 Pole Line Road Twin Falls, ID	Region 7 - DHW Offices 150 Shoup Avenue Idaho Falls, ID
Tuesday September 20, 2016 1:00 pm (Local)		
Region 6 - DHW Offices 1070 Hiline Pocatello, ID		

The hearing sites 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 Department is updating the Criminal History and Background Check (CHC) rules to better protect vulnerable adults and children. The Department is amending the list of disqualifying crimes for unconditional denials to include crimes that have been added to Idaho Code and crimes required for child protection by federal programs. The CHC rules need to align with the Idaho Child Care Program's (ICCP) grant and federal regulation requirements related to criminal history checks by September 2017. ICCP providers are required to have relevant records searched in other states where they have lived in the previous five years, as well as having the background checks renewed.

Because of the fee charged by other states to check protection registries, the cost of the background check for individuals working with children may increase because Idaho law requires that the fees cover the cost of the background check.

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

Through the rule negotiation process, it was determined that instead of increasing the background check fee for all applicants, it would be better to only increase the fees for the background checks of the applicants that are required to have additional records searched in other states where an individual has resided in the previous five years. The cost will stay the same as it is currently for most providers, unless they choose to work with children. Those individuals fee will increase by the amount charged by other states to check each states registries.

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:

The expected cost of the implementation of this rule change is \$85,150.00 for computer system upgrade. This expense will be covered with the Department's existing SFY 2017 budget appropriation. Once the rule changes are implemented, there will be no further fiscal impact to the State General Fund or to dedicated funds. This rulemaking is intended to be cost-neutral because the applicant is responsible for the costs unless otherwise provided by Department rule, as stated §56-1004A(7), Idaho Code.

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 1, 2016, Idaho Administrative Bulletin, **Vol. 16-6, pages 41 & 42.**

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

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 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
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 e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0506-1602 (FEE RULE)
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under 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. (4-6-15)()

001. TITLE, SCOPE AND POLICY.

01. Title. The title of this chapter is 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 vulnerable adults or children. Individuals requiring a criminal history check are identified in Department rules. (3-26-08)

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 ~~of~~ **regarding** crimes or ~~offenses~~ **findings** that would disqualify the individual from providing care or services to vulnerable populations. The Department **may** obtain information for these criminal history and background checks from the following sources: ~~(3-26-08)~~()

- a. Federal Bureau of Investigation; (3-26-08)
- b. National Crime Information Center; (3-26-08)
- c. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- d. ~~Idaho~~ **Any state or federal** Child Protection Central Registry; ~~(3-26-08)~~()
- e. ~~Idaho~~ **Any state or federal** Adult Protection Registry; ~~(3-26-08)~~()
- f. **Any state or federal** Sexual Offender Registry; ~~(3-26-08)~~()
- g. Office of Inspector General List of Excluded Individuals and Entities; (3-26-08)
- h. Idaho Department of Transportation Driving Records; (3-26-08)
- i. Nurse Aide Registry; (3-26-08)
- j. Other states and jurisdiction**s** records and findings. ~~(3-26-08)~~()

(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 ~~issued~~ **is a document designated** by the Department ~~once the~~ **as the official result of a completed** criminal history and background check ~~is completed and~~ **with** no disqualifying crimes or relevant records ~~are~~ found. ~~(3-26-08)~~()

04. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.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. 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)
- 10. Employer.** An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. (7-1-12)
- 11. Enhanced Clearance.** An enhanced clearance is a clearance issued by the Department that includes a search of protection registries in other states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. ()
- 12. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)
- 123. Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)
- 134. Good Cause.** Substantial reason, one that affords a legal excuse. (3-4-11)
- 145. Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)
- 156. 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)

011. -- 049. (RESERVED)

050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.

The fee for a Department fingerprint-based criminal history and background check is up to seventy dollars (\$70) for an individual. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. An applicant is responsible for any additional costs incurred by the Department paid to agencies or criminal jurisdictions in other states. The Department will collect the additional funds to cover its costs. (3-27-13)()

(BREAK IN CONTINUITY OF SECTIONS)

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. (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. ()

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 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)

120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals who are subject to a criminal history and background check must complete an application and have it notarized. The application must include disclosure of any disqualifying crimes, offenses, or relevant records. (3-26-08)

01. Application Form. The applicant must request a criminal history and background check by completing the Department's application form and submitting it on-line or by mail. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: (3-26-08)

a. Name, current and former names, or aliases; (3-26-08)

- b. Current and former addresses as requested in the application; ~~(3-26-08)~~()
- c. Date of birth, that appears on a valid identification document issued by a governmental entity; (3-26-08)
- d. State and country of birth; and (3-26-08)
- e. Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. (3-26-08)
- f. Other identifying information, including gender, race, height, weight, eye color, and hair color; (3-26-08)
- g. Employer information; (3-26-08)
- h. Any criminal record or criminal offense information; (3-26-08)
- i. Any pending charges or outstanding warrants; (3-26-08)
- j. Any child or adult protection involvement; (3-26-08)
- k. Any Medicare or Medicaid Provider Exclusion; and (3-26-08)
- l. Any other information requested on the application. (3-26-08)

02. Disclosures. The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. (3-26-08)

03. Failure to Disclose Information. ()

a. An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. (3-26-08)

b. An applicant required to obtain a criminal history and background check under Section 126 of these rules that makes a materially false statement in connection to his background check will receive an unconditional denial as provided in Section 200 of these rules. ()

121. -- 124. (RESERVED)

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

~~Under the provisions in 42 USC 16961 Section 152, a check of the Idaho Child Protection Central Registry may be requested by another state for foster or adoptive placement cases~~ The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with the provisions of applicable federal or state law. The Department will process those requests as described in this rule. ~~(4-7-11)~~()

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted by mail, facsimile transmission, or e-mail attachment on state or agency letterhead with the requesting authority contact information, and must include the following: ~~(4-7-11)~~()

- a. Name of the subject of the check, and any aliases; (4-7-11)
- b. Date of birth and Social Security Number of the subject of the check; and (4-7-11)
- c. A notarized signature of the subject of the check authorizing the request. (4-7-11)

02. **Fee Amount.** The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. (4-7-11)

03. **Department Response.** A response will be returned to the *state agency* initiating the request for the check within fourteen (14) days of receipt of the request. The Department's contact information will be included along with the result of the check. (~~4-7-11~~)()

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. ()

01. **Adoptive Parent Applicants.** Described in Subsection 100.01 of these rules. ()

02. **Children's Residential Care Facilities.** Described in Subsection 100.05 of these rules. ()

03. **Children's Therapeutic Outdoor Programs.** Described in Subsection 100.06 of these rules. ()

04. **Emergency Medical Services (EMS).** Described in Subsection 100.11 of these rules. ()

05. **Idaho Child Care Program (ICCP).** Described in Subsection 100.16 of these rules. ()

06. **Licensed Foster Care.** Described in Subsection 100.18 of these rules. ()

07. **Licensed Day Care.** Described in Subsection 100.19 of these rules. ()

08. **Mental Health Services.** Described in Subsection 100.20 of these rules. ()

~~126~~7. -- 129. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department obtains fingerprints electronically at each of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-14)

01. **Department Fingerprinting Locations.** A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website, ~~or you~~. The applicant may contact the Criminal History Unit as described in Section 005 of these rules for additional guidance. (~~4-6-15~~)()

02. **Submitting Fingerprints by Mail.** When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-14)

03. **Submission of Reprints.** In the event that an individual's submitted fingerprints are deemed

unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.

The Department will issue a clearance or denial once the criminal history and background check is completed. ()

01. ~~Department Clearance~~ Results of Criminal History and Background Checks. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. When a relevant record identified in Subsection 200.01.b of these rules has been disclosed, but the applicant has no conviction of any crimes listed in Subsections 210.01 or 210.02 of these rules, a clearance will be issued. (3-20-14)()

02. Findings for Court Required Criminal History and Background Checks. As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

01. ~~Department~~ Clearance. A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance. The employer must print the clearance within fourteen (14) calendar days of the clearance being accessible on the Department's website, and maintain a copy readily available for inspection. (4-6-15)()

02. Revocation of ~~Department~~ Clearance. An individual's previously issued clearance may be revoked for the following: (7-1-14)()

a. The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. (7-1-14)

b. The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. (7-1-14)

c. The criminal history and background check fees are not paid, or are insufficient to cover the costs of the background check. ()

191. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-4-11)

a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)

- b. A relevant record or finding on the Idaho any Child Abuse Central Protection Registry with a Level 1 or Level 2 finding; for the classes of individuals listed in Section 126 of these rules: (7-1-12)()
- c. A relevant record on the Nurse Aide Registry; (7-1-14)
- d. A relevant record on either the state or federal sex offender registries; ~~or~~ (7-1-14)()
- e. A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules; or (7-1-12)()
- f. A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules. ()

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (7-1-14)

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Appeal of an Unconditional Denial. Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. (7-1-14)

201. -- 209. (RESERVED)

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 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.c. of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. (7-1-12)()

a. Crimes against vulnerable adults: ()

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; ()

- ~~iii.~~ Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. ()
- ~~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; ()
- ~~f.~~ Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; ()
- ~~eg.~~ Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- ~~fh.~~ Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- ~~gi.~~ Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- ~~hj.~~ Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- ~~ik.~~ Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- ~~jl.~~ 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)
- ~~km.~~ 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)
- ~~ln.~~ Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- ~~m.~~ Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (~~3-26-08~~)
- ~~no.~~ Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- ~~op.~~ Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- ~~pq.~~ Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- ~~qr.~~ 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; ()
- ~~tl.~~ Sexual abuse or exploitation of a child, as defined in Sections 18-1506 ~~and 18-1507~~, Idaho Code; (~~3-26-08~~) ()
- ~~u.~~ Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; ()

v. Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; ()

~~sw.~~ Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)

~~fx.~~ Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)

~~ny.~~ 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)

~~yz.~~ Any felony punishable by death or life imprisonment; ~~of~~ (~~3-26-08~~)()

aa. Attempted strangulation, as defined in Section 18-923, Idaho Code; ()

bb. Felony domestic violence, as defined in Section 18-918, Idaho; or ()

~~cc.~~ 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.~~jn.~~ of this rule, or any substantially conforming foreign criminal violation: (~~7-1-14~~)()

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; ()

c. Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; ()

~~bd.~~ 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)

~~ee.~~ Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)

~~ff.~~ Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)

~~eg.~~ Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)

~~fn.~~ ~~Misdemeanor-p~~ Public assistance fraud, as defined in Sections 56-227 ~~and~~, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; (~~7-1-12~~)()

i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; ()

~~gj.~~ Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)

~~hk.~~ Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; (7-1-14)

~~il.~~ Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; ~~of~~ (~~7-1-14~~)()

m. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; ()
or ()

f. 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; or (3-26-08)
- b.** Applying for licensure or certification with the Department; and (3-26-08)
- c.** 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)

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. (4-6-15)

03. Employer Discretion. ~~The new~~ 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. (3-26-08)()

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)

COST/BENEFIT ANALYSIS FORM
Department of Health and Welfare
Administrative Procedures Section (APS)

Docket Number: 16-0506-1602

Agency Contact: Fernando Castro
Phone: 332-7999

Rules Specialist: Bev Barr
Phone: 334-5736

Date Analysis Completed: 6/27/2016

IDAPA Chapter Number and Title: IDAPA 16.05.06, "Criminal History and Background Checks"

Fee Rule Status: **Proposed** **Temporary** **Effective date: 7/1/2017**

Instructions:

Section 67-5223(3), Idaho Code, requires that all proposed rules in which a fee or charge is imposed or increased must include a statement of economic impact (cost/benefit analysis) of the rule change at the time the rule text is submitted for publication. This analysis needs to include an estimated cost to the agency to implement the rule and an estimated cost to be borne by citizens, or the private sector, or both.

Cost/Benefit Analysis For This Rule Change:

The cost of the implementation of these rules is expected to be a one-time expense of approximately \$85,150.00 for computer system upgrade. This cost will be covered by the Department's SFY2017 Budget Appropriation.

The Department does not expect to increase the fee charged to complete the background checks for all applicants completing a criminal history check, which is currently \$65.00 per person. The current fee is adequate to ensure that the program remains cost-neutral. This rule change is being prompted to comply with a federal mandate that is expanding the minimum investigative work for roughly 12% of the Department's background check applicants. Through the rule negotiation process, it was determined that instead of increasing the background check fee for all applicants, it would be better to only increase the fees for the background checks of the applicants that are Idaho Child Care Program's (ICCP) applicants.

The federal mandate specifies that the Department must ask where an applicant has resided within the last 5 years. If the applicant has lived in another state within the last 5 years and, wants to be an ICCP provider, he/she will need to pay for the costs of any relevant Child Protection records search that the Department may incur upon. Some states that maintain these records require the payment of fees to provide that information to the Department. Any additional costs borne by the Department to carry out these additional requirements will be collected from each applicant needing the additional record search for a criminal history check to ensure that the program remains cost-neutral. Because these fees vary by state and jurisdiction, at this time, the Department can't produce an accurate projection of its costs to complete these background checks once the rules are implemented.

- IDAPA 16.06.12, "Idaho Child Care Program," is being amended to meet new federal requirements for applicants who have lived out of state within the past five years and want to be a child care provider.