

Dear Senators HEIDER, Souza, Jordan, and
Representatives WOOD, Packer, Chew:

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

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No.
16-0310-1705);

IDAPA 16.06.01 - Child and Family Services - Temporary and Proposed Rule (Docket No.
16-0601-1701).

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 07/25/2017. 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 08/22/2017.

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: July 06, 2017

SUBJECT: Department of Health and Welfare

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No. 16-0310-1705)

IDAPA 16.06.01 - Child and Family Services - Temporary and Proposed Rule (Docket No. 16-0601-1701)

The Department of Health and Welfare submits notice of temporary and proposed rulemaking at IDAPA 16.03.10 and 16.06.01.

16.03.10

Section 56-255(3)(e)(ii), Idaho Code, provides that Medicaid recipients who have developmental disabilities are eligible for home-based and community-based services as an alternative to institutionalization. These services have an assigned budget but may exceed the budget when "health and safety issues are identified and meet the criteria as defined in [D]epartment rule." The Department conducts an exception review when it receives a request to exceed the assigned budget.

This temporary and proposed rule revises language relating to exception reviews in order to comply with a settlement agreement in a court case, *K.W. v. Armstrong*. Specifically, the rule eliminates language that restricted exception reviews to certain requests. Negotiated rulemaking was not conducted due to the nature of the rule change, and the Governor finds justification for the temporary rule, as it confers a benefit and protects the health and safety of the recipients. No negative fiscal impact on the state general fund is anticipated. The Department states that this rulemaking is authorized pursuant to Sections 56-202, 56-264, and 56-1610, Idaho Code.

16.06.01

Senate Bill 1164 (2017) appropriated \$839,100 to provide for a 20% increase in foster care reimbursement rates. This temporary and proposed rule revises the rates in accordance with that legislation.

Negotiated rulemaking was not conducted due to the nature of the rule change, and the Governor finds justification for the temporary rule, as it confers a benefit. The appropriation includes \$347,800 in state general fund moneys. The Department states that this rulemaking is authorized pursuant to numerous sections of the Idaho Code, including Section 16-1629, which authorizes the Department to enforce the Child Protective Act.

Mike Nugent, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

cc: Department of Health and Welfare
Beverly Barr and Frank Powell

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1705

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2017.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections: 56-202(b), 56-264, and 56-1610, 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, 2017.

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:

This change adjusts existing processes to comply with the class action settlement in *K.W. v. Armstrong*, No. 1:12-cv-00022-BLW (D. Idaho), and to ensure uniform applicability of the health or welfare exception in Idaho Code Section 56-255(3)(e)(ii). The Department is deleting the restriction that limits exception reviews to only participants who require residential high or intense supportive living services. This allows all developmental disability waiver participants the option to pursue exception review.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that this temporary adoption of rule confers a benefit based on the class action settlement in *K.W. v. Armstrong*, and protects the participants' health and safety.

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

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

The Department does not anticipate any fiscal impact either positive or negative for this rule change to any state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was deemed not feasible as these rule changes are necessary to comply with the class action settlement in *K.W. v. Armstrong*.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Westbrook at (208) 364-1960.

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, 2017.

DATED this 9th day of June, 2017

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THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0310-1705
(Only Those Sections With Amendments Are Shown.)

515. ADULT DEVELOPMENTAL DISABILITY SERVICES: QUALITY ASSURANCE AND IMPROVEMENT.

01. Quality Assurance. Quality Assurance consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with the corrective action plan, any term or provision of the provider agreement, or any applicable state or federal regulation. (7-1-16)

02. Quality Improvement. The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, participant experience related to home and community based setting qualities, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (7-1-16)

03. Exception Review. The Department will complete an exception review of plans or addendums requesting services that exceed the assigned budget authorized by the assessor. Requests for these services will be authorized when one (1) of the following conditions are met: (4-11-15)

a. Services are needed to assure the health *and or* safety of participants *who require residential high or intense supported living*, and the services requested on the plan or addendum are required based on medical necessity as defined in ~~Subsection 012-14~~ of these rules. ~~(4-11-15)~~(7-1-17)T

b. Supported employment services as defined in Section 703 of these rules are needed for the participant to obtain or maintain employment. The request must be submitted on the Department-approved Exception Review Form and is reviewed and approved based on the following: (4-11-15)

i. A supported employment service recommendation must be submitted that includes: recommended amount of service, level of support needed, employment goals, and a transition plan. When the participant is transitioned from the Idaho Division of Vocational Rehabilitation (IDVR) services, the recommendation must be completed by IDVR. When a participant is in an established job, the recommendation must be completed by the supported employment agency identified on the plan of service or addendum; (4-11-15)

ii. The participant's plan of service was developed by the participant and his person-centered planning team and includes a goal for supported employment services. Prior to the submission of an exception review with an addendum, a comprehensive review of all services on the participant's plan must occur. The participant's combination of services must support the increase or addition of supported employment services; and (4-11-15)

iii. An acknowledgment signed by the participant and his legal guardian, if one exists, that additional budget dollars approved to purchase supported employment services must not be reallocated to purchase any other Medicaid service. (4-11-15)

04. Concurrent Review. The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, participant rights are maintained services continue to be clinically necessary, services continue to be the choice of the participant, services support participant integration, and services constitute appropriate care to warrant continued authorization or need for the service. (7-1-16)

05. Abuse, Fraud, or Substandard Care. Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (3-19-07)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.06.01 – CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2017.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections: 16-1629, 16-2102, 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; and Senate Bill 1164 (2017).

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, 2017.

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:

This rulemaking puts into rule the specific increases to the foster care reimbursement rates that reflect the corresponding appropriation by the 2017 legislature. The rule changes represent a 20% increase in the foster care reimbursement rates.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule confers a benefit as it provides for the increase of the monthly foster care reimbursement rates.

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

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

\$839,100 (\$347,800 general funds and \$491,300 federal fund authority) was appropriated by the 2017 legislature to provide for a 20% increase to the foster care reimbursement rates. These increased rates will help foster parents provide shelter, food, clothing, supervision, educational necessities, and other personal incidentals required to promote the safety and well-being of the children in their care.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was deemed not feasible as these rule changes simply serve to put into place the increase to the monthly foster care reimbursement rates that reflect the funds appropriated by the 2017 legislature. Further negotiation over this rule change is not an option as any additional increase would require approval by the Idaho legislature.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sabrina Brown at (208) 334-5648.

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, 2017.

DATED this 9th day of June, 2017

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THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0601-1701
(Only Those Sections With Amendments Are Shown.)

483. PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.

Monthly payments for care provided by family alternate care providers are:

Family Alternate Care Payments - Table 483			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$ 329 ⁹⁵	\$ 366 ⁴³⁹	\$ 487 ⁵⁸⁴

~~(3-20-14)~~(7-1-17)T

01. Gifts. An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts will be paid in the appropriate months. (5-8-09)

02. Clothing. Costs for clothing will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (5-8-09)

03. School Fees. School fees due upon enrollment will be paid directly to the school or to the alternate care providers, based upon the Department's determination of the child's needs. (5-8-09)