

Dear Senators LODGE, Broadsword & Werk, and  
Representatives BLOCK, Nielsen & Henbest:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Commission for the Blind & Visually Impaired: IDAPA 15.02.02 - Vocational Rehabilitation Services (Docket No. 15-0202-0801).

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 11-12-08. 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 12-10-08.

\_\_\_\_\_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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Research & Legislation Staff - Paige Alan Parker

**DATE:** October 23, 2008

**SUBJECT:** Idaho Commission for the Blind and Visually Impaired - IDAPA 15.02.02 - Vocational Rehabilitation Services (Docket No. 15-0202-0801)(Proposed)

The Idaho Commission for the Blind and Visually Impaired (hereinafter "Commission") submits a proposed rule on Vocational Rehabilitation Services, Docket Number 15-0202-0701, (hereafter "proposed rule") amending IDAPA chapter 02.02, title 15.

According to the Commission, the proposed rule is authorized sections 67-5407(e), Idaho Code, the Rehabilitation Act of 1973, as amended in 1998, and related federal regulations. Section 67-5407(e) broadly grants the Commission authority to establish rules in accordance with the provisions of the administrative procedure act. The Commission has not provided Legislative Services with a copy of the specific federal law upon which it relies for this proposed rulemaking as required by section 67-5223(1), Idaho Code, nor cited the specific section of the federal statute as authority or requirement for the rulemaking as required by section 67-5224(2)(e), Idaho Code. In the text of the proposed rule, reference is made to 34 CFR 361.50. 34 CFR 361.50(b) provides:

- (c) *Payment for services.* (1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.
- (2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—
- (i) Not so low as to effectively deny an individual a necessary service; and
  - (ii) Not absolute and permits exceptions so that individual needs can be addressed.
- (3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

The Commission states that the proposed rule increases the upper limits it will contribute to clients for eligible expenses. The Commission states that the proposed rule is necessary to render it consistent with the increasing costs the Commission is facing in order to contribute financial assistance to clients for education expenses (from fixed fee to 90% of actual cost), books and supplies (from \$600/federal fiscal year to actual cost), transportation (\$200/month within 20 mile radius and \$300/month greater than 20 mile radius) and bioptics (increase from \$700 to \$900).

According to the Commission, no increased fee or charge is imposed by the proposed rule. The Commission also states that there is no anticipated impact to the general fund greater than \$10,000 during the fiscal year as a result of the proposed rule. However, the entire focus of the proposed rule is the adjustment of the upper limits on dollar amounts the Commission will contribute to clients for the specified categories of services. Such adjustment will require the Commission to pay more for these services and thus impact to the Commission's budget, unless the number of clients being served is reduced. The Commission is reviewing whether these additional expenditures fall outside the \$10,000 threshold.

According to the Department, negotiated rulemaking was not conducted prior to publication of the proposed rules because of the simple nature of the rulemaking. Public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than October 15, 2008. All written comments must be delivered to the Commission on or before October 22, 2008.

## **ANALYSIS**

The proposed rule provides separate treatment for public and private in-state institution education expenses. For public in-state institutions, the education expenses, including fees, tuition and health insurance costs, the Commission's client contribution limit is 90% of the actual cost for two semesters per federal fiscal year enrollment. Section 300.01.a. The Commission client contribution limit is the same for private in-state institutions, except the amount cannot exceed the actual cost per federal fiscal year at BSU, ISU or UI, whichever is higher. Section 300.01.b. The contribution limit for out-of-state institutions (public or private) is the same as for private in-state institutions, with the proviso that any scholarship must be applied first for tuition or fees before any expenditure of funds by the Commission. Section 300.01.c. The limit under the existing rule for any of these institutions is \$3,300.

The proposed rule provides for the Commission to pay the actual cost of required books and supplies, with the proviso that any grant or scholarship will be applied first for tuition or food, books and supplies before any expenditure of Commission funds. The limit under the existing rule is \$600 per federal fiscal year. Section 300.01.d.

The Commission will pay \$900, rather than \$700, for bioptics under the proposed rule. Section 300.01.e.iv. Transportation costs associated with personal vehicle usage, with or without a personal driver, will increase from \$100 to \$200 per month within a 20 mile radius, in-town commuting, and from \$200 to \$300 per month for commuting from greater than a 20 mile radius, out-of-town commuting. Section 300.01.i.ii.

## **SUMMARY**

The proposed rule appears to be authorized under section 54-5407(e), Idaho Code.

cc: Angela Jones, Administrator, Idaho Commission for the Blind and Visually Impaired;  
Nanna Hanchett, Rehab Services Chief

**IDAPA 15 - OFFICE OF THE GOVERNOR  
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

**15.02.02 - VOCATIONAL REHABILITATION SERVICES**

**DOCKET NO. 15-0202-0801**

**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 Section 67-5407(e), Idaho Code, and the Rehabilitation Act of 1973, its 1998 amendments, and related federal regulations.

**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 October 15, 2008.

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:

A change in certain rates and structure of the payment policy set forth at IDAPA 15.02.02.300 is necessary to render it consistent with the increasing costs the Commission is facing in order to contribute financial assistance to clients for the following specific services: education expenses, books and supplies, transportation, and bioptics. The Commission proposes increasing the upper limits it will contribute to clients for eligible expenses as follows:

1. Education expenses to be changed from a fixed fee to 90% of actual costs without exceeding Boise State University, Idaho State University, or the University of Idaho's actual fees;
2. Books and supplies to be changed from \$600 per federal fiscal year to the actual costs;
3. Transportation costs to be increased to \$200 per month within a 20-mile radius, and \$300 per month for a greater than 20-mile radius, of commuting miles from home; and
4. Bioptics will increase from \$700 to \$900.

**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 resulting from this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nanna Hanchett, Rehab Services Chief, (208) 639-8354.

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 October 22, 2008.

DATED this 12th day of August, 2008.

Angela Jones, Administrator  
Idaho Commission for the Blind and Visually Impaired  
341 W. Washington St.  
PO Box 83720, Boise, ID 83720-0012  
Phone: (208) 334-3220 / Fax: (208) 334-2963

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0202-0801**

**300. PAYMENT POLICY.**

**01. Upper Limits.** In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

**a. Education expenses – public in-state institutions.** ~~Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment.~~ ( )

**~~ab.~~ Education expenses – private in-state institutions.** Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho ~~public and~~ private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school; ~~Three thousand three hundred dollars (\$3,300) Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher.~~ If the client receives ~~a Pell~~ any Grant or scholarship, it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (~~4-2-08~~) ( )

**~~bc.~~ Education expenses - out-of-state institutions.** Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school; ~~three thousand three hundred dollars (\$3,300) Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher.~~ If the client receives ~~a Pell~~ any Grant or scholarship, it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (~~4-2-08~~) ( )

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the Commission regional office assisting the client. (4-2-08)

**~~ed.~~ Books and supplies.** ~~Six hundred dollars (\$600) per federal fiscal year. This limit~~ Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship, it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. (~~4-2-08~~) ( )

**~~de.~~ Medical exams including written report.** (4-2-08)

i. Specialist exam by M.D.: Two hundred dollars (\$200) plus actual cost of related procedures such as x-rays. (4-2-08)

ii. Psychological exam by licensed psychologist: Two hundred dollars (\$200) plus actual cost of

- psychometric tests. (4-2-08)
- iii. Ophthalmologist/Optometrist exam: Two hundred dollars (\$200) plus actual cost of visual field exam or other necessary tests. (4-2-08)
- (1) Low vision exam: One hundred twenty-five dollars (\$125). (4-2-08)
- (2) Follow-up low vision consultation: Fifty-five dollars (\$55). (4-2-08)
- (3) Eye report: Twenty-five dollars (\$25). (4-2-08)
- iv. Eye glasses or contact lenses: Eighty dollars (\$80) for frames and the usual and customary cost for lenses and contact lenses. ~~Seven~~ Nine hundred dollars (~~\$700~~) for biotics. (~~4-2-08~~)
- v. Audiologist exam: Eighty-five dollars (\$85). (4-2-08)
- vi. Physical exam (general basic medical): Sixty-five dollars (\$65). (4-2-08)
- ef.** Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at eighty dollars (\$80) per hour. (4-2-08)
- fg.** Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. (4-2-08)
- gh.** Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five hundred dollars (\$500) per case. (4-2-08)
- hi.** Transportation. (4-2-08)
- i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
- ii. Transportation costs associated with personal vehicle usage with or without personal driver: ~~One~~ Two hundred dollars (~~\$200~~) per month within a twenty (20) mile radius in-town commuting and ~~two~~ three hundred dollars (\$2300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). The Commission does not provide funds for a client's purchase of a motor vehicle. (~~4-2-08~~)
- iii. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
- ij.** Maintenance: One thousand five hundred dollars (\$1,500) per federal fiscal year and no more than three hundred dollars (\$300) per month. There is no limit on the number of months a client can receive maintenance up to the one thousand five hundred dollar (\$1,500) limit per federal fiscal year. (4-2-08)
- i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
- ii. Maintenance for client attendance at Assessment and Training Center (ATC): Three hundred dollars (\$300) per ATC term for basic living expenses incurred during the ATC term which are directly related to client's ATC attendance and participation. (4-2-08)
- jk.** Copy fees: Fifteen dollars (\$15) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (4-2-08)
- kl.** Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and equipment provided to client from existing Commission inventory will count towards the one thousand dollar (\$1,000) limit. If

there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (4-2-08)

**lm.** On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)

**mp.** Computers including hardware and software: One thousand dollars (\$1,000) per case. If the Commission determines that a change in computers is necessary, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (4-2-08)

**no.** Self-employment plans: Three thousand dollars (\$3,000). (4-2-08)

**op.** Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)

**02. Exclusion of Surgery and Organ Transplantation.** (4-2-08)

**a.** The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (4-2-08)

**b.** The Commission does not provide funds for a client's organ transplantation. (4-2-08)

**03. Authorization to Purchase.** When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the rehabilitation services chief or the Commission administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (4-2-08)

**04. Exception Policy.** Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the rehabilitation services chief of the Commission. (4-2-08)