

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

The Office of the Legislative Services, Research and Legislation, has received the enclosed rules of the Dept. Of Health & Welfare: IDAPA 16.02.08 - Vital Statistic Rules (Docket No. 16-0208-0801).

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 4-28-08. 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 5-26-08.

_____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: April 9, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.02.08 - Vital Statistic Rules (Docket No. 16-0208-0801 (Proposed))

By this Proposed Rule docket, the Department of Health and Welfare amends chapter 002.08 of title 16, Idaho Administrative Code (Docket No. 16-0208-0801)(hereinafter, "proposed rule"). According to the Department, the proposed rule is authorized pursuant to sections 39-242, 39-268 and 39-5403, Idaho Code. Section 39-242(c), Idaho Code, allows the Board of Health and Welfare to adopt, amend and repeal regulations for the purpose of carrying out the provisions of the Vital Statistics chapter of the Idaho Code. Section 39-268, Idaho Code, was amended in 2007 to permit physician assistants, and advanced practice professional nurses to certify cause of death, provide reference to the coroner when death is due to natural causes and an authorized person is not available or is physically incapable of signing, sign certificates of stillbirth and authorize final disposition of deaths and stillbirths. The citation to section 39-5403, Idaho Code, is a mistake, since that section deals with artificial insemination.

According to the Department, no fee or charge is imposed by the proposed rule and there is no anticipated fiscal impact to the state General Fund as a result of this rulemaking. The Department states that negotiated rulemaking was not conducted because the rulemaking was requested by the 2008 Legislature to align the rule with section 39-268, Idaho Code, as amended in 2007. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than Wednesday, May 21, 2008. All written comments must be delivered to the Department on or before Wednesday, May 28, 2008.

The Department sponsored SB 1069 in the 2007 legislative session to amend section 39-268, Idaho Code, to add advanced practice professional nurses and physician assistants to the list of those legally authorized to sign death and stillbirth certificates and to authorize the final

disposition and removal of a dead body or stillborn fetus. The Department states that the House Health and Welfare Committee, during the 2008 rule review process, requested that IDAPA section 16.02.08.850 be aligned with the terminology used in section 39-268, Idaho Code, to avoid allowing unqualified individuals to inadvertently sign death and stillbirth certificates.. Specifically, the Department states that the proposed rule changes the terms “designate” and “designee” to “designated associate” in section 850 of the rule.

ANALYSIS

The proposed rule changes “designee” or “designate” to “designated associate” at four (4) places in section 850. Under the proposed rule, before removing a dead body or fetus, the funeral director (or person acting as such) must: (1) obtain assurance from the attending physician, physician assistant or advanced practice professional nurse responsible for medical certification of the cause of death, or such person’s “designated associate,” that the death or stillbirth was from natural causes and the attending physician, physician assistant or advanced practice professional nurse, or such person’s “designated associate,” will assume responsibility for certification of the cause of death or stillbirth; (2) notify the coroner when the death or stillbirth is due to natural causes and the attending physician, physician assistant or advanced practice professional nurse, or such person’s “designated associate,” is not available or is physically incapable of providing assurance that the death or stillbirth is from natural causes or providing permission for removal; or (3) receive permission to remove the dead body or fetus from the place of death or stillbirth from the attending physician, physician assistant or practice professional nurse , or such person’s “designated associate,” if the death is from natural causes and all specified assurances under the rule have been met.

SUMMARY

The intent of the Department’s proposed rule is authorized under sections 39-242(c) and 39-268, Idaho Code

cc: Sherri Kovach & Greg Heitman

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.08 - VITAL STATISTICS RULES

DOCKET NO. 16-0208-0801

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 Sections 39-242 and 39-5403, Idaho Code, as well as Section 39-268, 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 Wednesday, May 21, 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:

During the 2008 legislative session, the House Health and Welfare Committee approved Vital Statistics rule Docket No. 16-0208-0701, but requested that the language in Section 850 of the rule be aligned with the language in Section 39-268, Idaho Code. Committee members were concerned that the use of the words "designate" and "designee" in the rule might inadvertently allow unqualified individuals to sign certificates of death and stillbirth. The rule changes in this docket address that concern.

Specifically, the terms "designate" and "designee" are being changed to "designated associate," to mirror the terminology used in Section 39-268, Idaho Code.

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 fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done to align the rule terminology with Section 39-268, Idaho Code, as requested by the 2008 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Greg Heitman at (208) 334-5986.

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 Wednesday, May 28, 2008.

DATED this _____ day of _____, 2008.

Sherri Kovach
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DHW – Administrative Procedures Section
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Boise, Idaho 83720-0036

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0208-0801

850. REMOVAL OF DEAD BODY OR FETUS FROM PLACE OF DEATH OR STILLBIRTH.

Before removing a dead body or fetus from the place of death or stillbirth, the funeral director, or person acting as such, must, in accordance with Section 39-268, Idaho Code: (4-2-08)

01. Obtain Assurance That Death Is from Natural Causes. Obtain assurance from the attending physician, physician assistant, advanced practice professional nurse, or his ~~designated~~ designated associate, responsible for medical certification of the cause of death or stillbirth: (~~4-2-08~~)(____)

a. That the death or stillbirth is from natural causes; and (4-2-08)

b. That the attending physician, physician assistant, advanced practice professional nurse, or his ~~designated~~ designated associate, will assume responsibility for certification of the cause of death or stillbirth; or (~~4-2-08~~)(____)

02. Notify the Coroner. Notify the coroner when: (4-2-08)

a. The case falls within the jurisdiction of the coroner in accordance with Section 39- 260, Idaho Code; or (4-2-08)

b. The death or stillbirth is due to natural causes; and (4-2-08)

i. There was no attending physician, physician assistant, or advanced practice professional nurse during the last illness; or (4-2-08)

ii. There was no physician, physician assistant, or advanced practice professional nurse in attendance at the stillbirth; or (4-2-08)

iii. When the attending physician, physician assistant, advanced practice professional nurse, or his ~~designated~~ designated associate, is not available or is physically incapable of providing assurance that the death or stillbirth is from natural causes or providing permission to remove the dead body or fetus from the place of death or stillbirth. (~~4-2-08~~)(____)

03. Receive Permission to Remove the Dead Body or Fetus. Receive permission to remove the dead body or fetus from the place of death or stillbirth from: (4-2-08)

a. The attending physician, physician assistant, advanced practice professional nurse, or his ~~designee~~ designated associate, if the death is from natural causes and all assurances in Subsection 850.01 of this rule have been met; or (~~4-2-08~~)(____)

b. The coroner, if the case falls within the jurisdiction of the coroner, in accordance with Section 39-260, Idaho Code, or if the death or stillbirth is due to natural causes and one (1) of the conditions listed in Subsections 850.02.b.i. through 850.02.b.iii. of this rule has been met. (4-2-08)