

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

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

**16.03.03 Child Support Services Docket No. 16-0303-0802 - temporary
and proposed.**

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
10-20-2008. 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 11-18-2008.

_____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: September 30, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.03.03 - Rules Governing Child Support Services (Docket No. 16-0303-0802) (temporary and proposed)

The Department of Health and Welfare submits this temporary and proposed rule (Docket No. 16-0303-0802) (hereinafter “temporary and proposed rule”) to amend IDAPA chapter 16.03.03 dealing with rules governing child support services. The Governor’s justification for the temporary rule is to comply with deadlines in amendments to governing law found in the Deficit Reduction Act of 2005. No copy of the specific federal law has been provided to this Office as required by section 67-5223(1), Idaho Code. The temporary rule goes into effect on October 1, 2008.

The Department states that the Federal Deficit Reduction Act of 2005 contains a provision that requires each state’s child support enforcement program to conduct review at least every 36 months on all child support enforcement cases in which recipients also receive Temporary Assistance to Needy Families (TANF) benefits. The purpose of this 36 month review is to better ensure that a child support recipient who receives TANF benefits has an accurate support order that reflects the current incomes of the custodial and non-custodial parents. The Department notes that this provision also applies to TANF recipients in other states who have Idaho Child support orders.

According to the Department, the temporary and proposed rule is authorized by sections 7-1206, 32-1209, 32-1217, 56-203A and 56-1004, Idaho Code, and by 42 U.S.C, section 666(a), as amended by 4 Stat. 120 (February 8, 2006). Section 7-1206, Idaho Code, creates a lien against the real and personal property of a child support obligor when there is a delinquency under a child support order for which the Department is or has been providing child support enforcement services. Section 32-1209, Idaho Code, provides for service by the Department of an income withholding order, while section 32-1217, Idaho Code, provides procedure for terminating an income withholding order when a child support obligee cannot be located.

Section 56-203A, Idaho Code, provides the Department with the authority to enforce child support orders, including the authority to charge reasonable fees to compensate for services rendered in establishment of or enforcement of support obligations. Section 56-1004(1)(a), Idaho Code, grants the Department's Director rulemaking authority as may be necessary to his administrative responsibilities.

Forty-two U.S.C. 666(a)(10), is part of the Social Security Act dealing with grants to states for aid and services to needy families with children and for child-welfare services - Child Support and Establishment of Paternity. No amendment contained at 4 Stat 120 (February 8, 2006) could be found. That citation is in error. Section 666(a)(10), amended as part of Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat 4, mandated that if there has been an assignment, the State shall undertake a review of a support order.

Not cited as authority by the Department are sections 56-202 and 56-203, Idaho Code. Section 56-202(b), Idaho Code, grants the Department broad rulemaking authority to carry out its responsibilities under title 56, Idaho Code. Section 56-203(b), Idaho Code, grants the Department the power to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services.

According to the Department, no fee or charge is being imposed or increased as a result of the rule and there is no anticipated impact to the state General Fund as a result of this rulemaking. The Department states that negotiated rulemaking was not conducted because the changes are being made to comply with the Deficit Reduction Act of 2005. Public hearings will be held if requested in writing by 25 persons, a political subdivision or an agency not later than October 15, 2008. All written comments must be received by the Department on or before October 22, 2008.

ANALYSIS

Sections 000, 001, 002, 003, 004, 005 and 006 of the temporary and proposed rule are standard rule sections dealing with: legal authority [adding section 32-1214G, Idaho Code, dealing with the Department's authority to promulgate rules necessary to implement and enforce orders for medical insurance]; title, scope and goal; written interpretations [none], administrative appeal; office hours - mailing address - street address - telephone - website; and confidentiality of records and public records requests.

The temporary and proposed rule modifies the provision dealing with review of child support orders in three ways. First, it clarifies that a support order will be reviewed for possible modification if requested by any state, tribal or foreign child support services agency. Section 601.02.b. Second, it complies with the federal amendments contained in the Deficit Reduction Act of 2005 by providing that the child support order will be automatically reviewed for possible modification at least every 36 months where the custodial parent or other custodian of the child is receiving TANF benefits, either in Idaho or elsewhere. Section 601.02.02.c. Third, it removes the requirement that a substantial and material change in circumstance be showing before a modification of a support

order will be sought. Section 601.04.

SUMMARY

The Department's rule change appears to be authorized under sections 56-202(b), 56-203(b) and 56-203A, Idaho Code.

cc: Kandee Yearsley, Department of Health and Welfare, Administrative Procedures Section

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-0802

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2008.

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 7-1206, 32-1209, 32-1217, 56-203A, and 56-1004, Idaho Code; also 42 U.S.C. Section 666(a)(10) as amended by 4 Stat. 120 (February 8, 2006).

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, 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 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 Deficit Reduction Act of 2005 contains a provision that requires each state's child support enforcement program to conduct reviews at least every 36 months on all child support enforcement cases in which recipients also receive Title IV-A (TANF*) benefits. This rule change implements that requirement.

This 36-month review requirement better ensures that a child support recipient who receives TANF benefits has an accurate support order that reflects the current incomes of the custodial and non-custodial parents. It should be noted that this provision also applies to Title IV-A recipients in other states who have Idaho child support orders.

*"Temporary Assistance to Needy Families" (TANF) - Idaho's TANF program is called "Temporary Assistance for Families in Idaho" (TAFI)

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 because it is being promulgated to comply with deadlines in amendments to governing law found in Deficit Reduction Act of 2005.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

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 associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because these rules are being changed to bring them into compliance with the Deficit Reduction Act of 2005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kandee Yearsley (208) 334-0620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 22, 2008.

DATED this 1st day of August, 2008.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone (208) 334-6558 fax
dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-0802

000. LEGAL AUTHORITY.

The Department of Health and Welfare, ~~Child Support Services~~, is authorized to promulgate these rules under Sections 7-1206, 32-1209, ~~32-1214G~~, 32-1217, 56-203A, and 56-1004, Idaho Code. ~~(3-30-01)~~(10-1-08)T

001. TITLE, ~~AND SCOPE, AND GOAL.~~

01. Title. ~~These title of these rules are known and will be cited as Idaho Department of Health and Welfare Rules, is~~ IDAPA 16.03.03, "Rules Governing Child Support Services," ~~IDAPA 16, Title 03, Chapter 03.~~ (10-1-08)T

02. Scope. These rules provide the ~~standards~~ requirements for the administration of the Department's child support program. ~~(7-1-98)~~(10-1-08)T

03. Goal. The goal of child support services is to ensure that both parents provide the financial support necessary to provide for their children. This program requires cooperation between families, employers, and the community. (10-1-08)T

002. WRITTEN INTERPRETATIONS.

~~The responsible program agency within the Department may from time to time issue written interpretations and guidelines as necessary to promote uniform application~~ There are no written interpretations of these rules. ~~(7-1-98)~~(10-1-08)T

003. ADMINISTRATIVE APPEAL.

~~Contested case~~ Administrative appeals ~~shall be~~ are governed by ~~Idaho Department of Health and Welfare Rules, provisions of IDAPA 16, Title 05, Chapter 03~~ 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~(7-1-98)~~(10-1-08)T

004. INCORPORATION BY REFERENCE.

There are no incorporations by reference in this chapter of rules. (10-1-08)T

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-08)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-08)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-08)T

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-08)T

05. Internet Website. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (10-1-08)T

0046. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any request for disclosure of information obtained by Child Support Services is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 01, "Use and Disclosure of Department Records." (7-1-98)

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (10-1-08)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (10-1-08)T

005. CHILD SUPPORT SERVICES.

The goal of Child Support Services is to ensure that both parents provide the financial support necessary to provide for their children. This program requires cooperation between families, employer and the community. (7-1-98)

0067. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

601. REVIEW AND MODIFICATION OF SUPPORT ORDERS.

01. Notice. Each parent subject to a child support order in effect in the State that is being enforced by Child Support Services ~~shall~~ must be notified of the right of the parent to request a review of the order by Child Support Services every thirty-six (36) months. Reviews are not to be done more frequently unless there has been a substantial and material change in circumstances. (7-1-98)(10-1-08)T

02. Review. A support order ~~shall will~~ be reviewed for possible modification; ~~at the request of either parent subject to the order or a state child support services agency.~~ (7-1-98)(10-1-08)T

a. If requested by either parent; (10-1-08)T

b. If requested by any state, tribal, or foreign child support services agency; or (10-1-08)T

c. Automatically, at least every thirty-six (36) months, in any case where the custodial parent or other custodian of the child or children is receiving benefits under Title IV-A of the Social Security Act, either in Idaho or elsewhere. (10-1-08)T

03. After the Review. Each parent will be notified of the proposed adjustment or of the determination that there should be no change in the amount of child support. (7-1-98)

04. Adjustment. A modification of a support order will only be sought ~~upon a showing of substantial and material change in circumstances which~~ if the review conducted under Subsection 601.02 of this rule results in an obligation under the Child Support Guidelines which differs from the existing order by at least fifteen percent (15%), but not less than fifty dollars (\$50) per month. The following criteria ~~shall will~~ be applied by Child Support Services to determine whether there has been a substantial and material change of circumstances: (7-1-98)(10-1-08)T

- a.** Whether there has been an increase or decrease in the income, as the term is defined in the Child Support Guidelines, of either parent or other person legally obligated for the support of a child; (7-1-98)
- b.** Whether there has been a substantial increase or decrease in the assets of either parent or other person legally obligated for the support of a child; (7-1-98)
- c.** Whether there has been a substantial change in the needs of the child; (7-1-98)
- d.** Whether there has been a change in the custody or visitation rights of the non-custodial parent; and (7-1-98)
- e.** Whether other factors exist indicating a substantial and material change in circumstances since the entry or modification of the support order. (7-1-98)