

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: 16.03.08 Temporary Assistance for Families.

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 10-9-08. 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 11-6-08.

_____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: September 22, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.03.08 - Rules Governing Temporary Assistance for Families in Idaho (Docket No. 16-0308-0803 (Proposed))

By this Proposed Rule docket, the Department of Health and Welfare amends chapter 03.08 of title 16, Idaho Administrative Code (Docket No. 16-0608-0803)(hereinafter, “proposed rule”). According to the Department, the proposed rule is authorized pursuant to sections 56-202 and 56-203, Idaho Code. Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho’s public assistance law. Section 56-203, Idaho Code, provides the Department with various powers, including to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services, to define persons entitled to medical assistance in such terms as will meet requirements for federal participation in medical assistance payments and to determine the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals.

The Department states that the rule is being amended to better serve the individuals or families who are in need of cash assistance.

According to the Department, no fee or charge is imposed by the proposed rule, but the Department anticipates that the proposed rule’s impact to the General Fund will be \$2,502. The Department states that negotiated rulemaking was not conducted since the rule confers a benefit and is governed by federal regulations. 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, October 15, 2008. All written comments must be delivered to the Department on or before Wednesday, October 22, 2008.

ANALYSIS

Two new definitions are being added by the proposed rule: “caretaker relative” and “family unit.” Sections 010.04 and 08. Neither of these terms have a definition statutory counterpart. Under the proposed rule, “caretaker relative” means an adult specified relative other than parents who have an eligible related child residing with them and who are responsible for the child’s care. “Family unit” is defined by the proposed rule as a unit of eligible individuals that includes parents or may include caretaker relatives, who have an eligible related child residing with them.

The proposed rule provides that if more than one individual in a family unit is potentially eligible for Temporary Assistance for Families in Idaho (TAFI), only one TAFI cash benefit is allowed for the family unit for the same month. Section 113.01.

The proposed rule eliminates the subsection titles of “mandatory individuals” and “optional individuals.” Instead, the proposed rule provides separate discussions for parental caretakers and caretaker relatives. In section 125.01, now titled “Budgeting for Parental Caretakers,” children must reside with a parent but not with a caretaker relative. In section 125.02, now titled “Budgeting for Caretaker Relatives,” the proposed rule provides that Social Security Income (SSI) received by a child in a multiple child family unit is not counted in the determination of the grant amount. The purpose of these changes, according to the Department, is to clarify eligibility requirements for optional and mandatory individuals. However, the proposed rule in this regard is less than clear.

The proposed rule eliminates making the family ineligible for TAFI when an applicant is ineligible for TAFI benefits due to an unverified Social Security number. Section 133.

Under the proposed rule, eligible children must obtain immunizations but need not do so according the Department’s schedule for immunizations. Section 141.

Excluded from the family monthly resource limit of \$2,000 under the proposed rule are accounts with funds legally identified as moneys to pay for educational expenses and accounts legally identified as moneys for retirement. Section 208. The proposed rule clarifies that the portion of what an agency or housing authority pays for a participant’s housing cost is excluded from countable income. Section 215.23. Also excluded from countable income is “subsidized employment,” employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and cost of employing an individual. The proposed rule further refines the term “subsidized employment” as being short-term placement, paying prevailing wage, results in the acquisition of a specific skill and being prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. Section 215.37.

When a caretaker relative applies only for a relative child, the child's resources are not counted under the proposed rule. Section 239.

SUMMARY

The Department's proposed rule changes appear to be authorized under section 56-202(b), Idaho Code.

cc: Genie Sue Weppner, Department of Health and Welfare.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

DOCKET NO. 16-0308-0803

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 and 56-203, 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 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:

In order to better serve the families or individuals in Idaho who are in need of cash assistance, the Department is amending these rules to:

1. Provide definitions of a caretaker relative and family unit;
2. Limit the number of TAFI cash assistance to one grant per family per month.
3. Clarify eligibility requirements for optional and mandatory individuals and the Social Security Number (SSN) requirement;
4. Modify the immunization requirement;
5. Amend resource and income exclusions;

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.

The fiscal impact due to this rulemaking is anticipated to be \$2502 of state general funds.

NEGOTIATED RULEMAKING: Pursuant to 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit and are governed by federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

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 26th 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 FOR DOCKET 16-0308-0803

010. DEFINITIONS.

- 01. Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- 02. Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
- 03. Department.** The Idaho Department of Health and Welfare. (7-1-98)
- 04. Caretaker Relative.** An adult specified relative other than parents who have an eligible related child residing with them and who are responsible for the child's care. ()
- 045. Dependent Child.** A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (3-30-01)
- 056. Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- 067. Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
- 08. Family Unit.** A unit of eligible individuals that includes parents or may include caretaker relatives, who have an eligible related child residing with them. ()
- 079. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 0810. Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)
- 0911. Parent.** The mother or father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (7-1-98)
- 102. Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
- 143. Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
- 124. Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)
- 135. Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)
- 146. Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

113. CONCURRENT MULTIPLE BENEFIT PROHIBITION.

01. Multiple TAFI Benefits. If individuals in a family unit are potentially eligible for TAFI benefits, only one (1) TAFI cash benefit is allowed in the same month for the family unit. ()

02. Multiple Program Benefits. If an individual is potentially eligible for either TAFI or AABD, only one (1) program may be chosen. If a child is potentially eligible for either TAFI or foster care, only one (1) program may be chosen. No individual may be eligible for benefits as a member of more than one (1) family in the same month. (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

125. ~~MANDATORY INDIVIDUALS~~ BUDGETING FOR PARENTAL CARETAKERS.

Individuals who must be included in the family are listed in Subsections 125.01 through 125.03 of this rule. (~~3-15-02~~)()

01. Children. Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school or the equivalent level of vocational or technical training full time. Children must reside with a parent ~~or a caretaker relative~~ who exercises care and control of them. A dependent child's natural or adoptive brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. (~~4-5-00~~)()

02. Parents. Parents who have an eligible natural or adopted child residing with them. (7-1-98)

03. Pregnant Woman. A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)

126. ~~OPTIONAL INDIVIDUALS~~ BUDGETING FOR CARETAKER RELATIVES.

Individuals who may be eligible are listed in Subsections 126.01 and 126.02 of this rule. (~~3-15-02~~)()

01. Caretaker Relatives. Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt, uncle, nephew, niece, first cousin, or first cousin once removed; one (1) of these relationships prefixed by "grand" or "great"; one (1) of these relationships by half-blood; a stepparent, step-sibling, or the spouse of a relative by marriage, even if the marriage has ended. (~~7-1-98~~)()

02. Related Multiple Children. ~~Related dependent children who are not siblings or half (1/2) siblings of family members and who are living in the home.~~ When multiple children are included in the family unit and any child receives Social Security Income, that income is not counted in the determination of the grant amount. (~~4-5-00~~)()

(BREAK IN CONTINUITY OF SECTIONS)

133. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

An applicant must provide his Social Security Number (SSN), or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN

must be verified by the Social Security Administration (SSA) electronically. When an SSN is unverified, the applicant is not eligible for TAFI benefits ~~and makes the family ineligible for TAFI~~. The Department must notify the applicant in writing if eligibility is being denied or lost for failure to meet the SSN requirement. ~~(3-20-04)~~(____)

01. Application for SSN. The applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-20-04)

02. Failure to Apply for SSN. The applicant may be granted good cause for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (3-20-04)

a. Is a member of a recognized religious sect or division of the sect; and (3-20-04)

b. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

141. IMMUNIZATION RESPONSIBILITY.

Eligible children must obtain immunizations ~~according to the Department's schedule for immunizations~~, unless there is a religious or other objection, or immunization would endanger the life or health of a child. ~~(7-1-98)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

208. RESOURCE EXCLUSIONS.

The resources listed in Subsections 208.01 through 208.104 are excluded. ~~(7-1-98)~~(____)

01. Home and Lot. The family's home, surrounding land and buildings not separated by property owned by others. A public road or right of way that separates any plot from the home does not affect the exclusion. (7-1-98)

02. Household Goods. Household goods are items of personal property normally found in the home. The items must be used for maintenance, use, and occupancy of the home. Household goods include furniture, appliances, television sets, carpets, and utensils for cooking and eating. (3-30-01)

03. Personal Effects. Personal effects are items worn or carried by a participant, or items having an intimate relation to the participant. Personal effects include clothing, jewelry, personal care items, and prosthetic devices. Personal effects also include items for education or recreation, such as books, musical instruments, or hobby materials. (3-30-01)

04. Building Lot. One (1) unoccupied lot and one (1) partially built home. Only one (1) home and one (1) lot can be excluded. (7-1-98)

05. Unoccupied Home. A home temporarily unoccupied due to employment, training, medical care or treatment and natural disasters. (7-1-98)

06. Home Loss or Damage Insurance Settlements. An insurance settlement awarded to a family for home loss or damage, for twelve (12) months from the date of receipt. (7-1-98)

07. Income Producing Property. Real property that annually produces income consistent with its fair

market value. (7-1-98)

08. Equipment Used in a Trade or Business. Equipment used in a trade or business or reasonably expected to be used within one (1) year from their most recent use. (7-1-98)

09. Contracts. A mortgage, deed of trust, promissory note, or any other form of sales contract if the purchase price and income produced are consistent with the property's fair market value. (7-1-98)

10. Life Insurance. The cash surrender value of a life insurance policy. (7-1-98)

11. Native American Payments. To the extent authorized, payments or purchases made with payments authorized by law based on Native American ancestry. (7-1-98)

12. Funeral Agreements. The cash value of an irrevocable funeral agreement. (7-1-98)

13. Education Accounts. Account with funds legally identified as monies to pay for educational expenses. ()

14. Retirement and Tax Preferred Accounts. Accounts legally identified as monies for retirement. ()

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.

The types of income listed in Subsections 215.01 through 215.367 are excluded. ~~(3-30-01)~~()

01. Supportive Services. Supportive services payments. (7-1-98)

02. Work Reimbursements. Work-related reimbursements. (7-1-98)

03. Child's Earned Income. Earned income of a dependent child, who is attending school. (7-1-98)

04. Child Support. Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)

05. Loans. Loans with a signed, written repayment agreement. (7-1-98)

06. Third Party Payments. Payments made by a person directly to a third party on behalf of the family. (7-1-98)

07. Money Gifts. Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)

08. TAFI. Retroactive TAFI grant corrections. (7-1-98)

09. Social Security Overpayment. The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)

10. Interest Income. Interest posted to a bank account. (7-1-98)

11. Tax Refunds. State and federal income tax refunds. (7-1-98)

12. EITC Payments. EITC payments. (7-1-98)

13. **Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
14. **Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
15. **Foster Care.** Foster care payments. (7-1-98)
16. **Adoption Assistance.** Adoption assistance payments. (7-1-98)
17. **Food Programs.** Commodities and food stamps. (7-1-98)
18. **Child Nutrition.** Child nutrition benefits. (7-1-98)
19. **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
1981. 20. **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
9101. 21. **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
22. **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
23. **Housing Subsidies.** ~~Housing subsidies.~~ An agency or housing authority pays a portion of or all of the housing costs for a participant. (7-1-98)()
24. **Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
25. **Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
26. **Educational Income.** Educational income, except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income. (7-1-98)
27. **Work Study Income of Student.** College work study income. (7-1-98)
28. **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
29. **Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
30. **Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
31. **Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
32. **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
33. **Agent Orange.** Agent Orange settlement payments. (7-1-98)
34. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)

35. Japanese-American Restitution Payments. Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)

36. Vista Payments. Volunteers in Service to America (VISTA) payments. (3-30-01)

37. Subsidized Employment. Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. ()

(BREAK IN CONTINUITY OF SECTIONS)

239. CARETAKER RELATIVE APPLYING ONLY FOR RELATIVE CHILD.
When a caretaker relative applies only for a relative child, only the child's income ~~and resources are~~ is counted. (7-1-98)()