

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Dept. Of Health & Welfare: IDAPA 16.03.22 - Residential Care or Assisted Living Facilities (Docket No. 16-0322-0801).

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:** Department of Health and Welfare - IDAPA 16.03.22 - Residential Care or Assisted Living Facilities (Docket No. 16-0322-0801) (Proposed); and Amendment thereto

According to the Department, the proposed rule contained in Docket No. 16-0322-0801, Residential Care or Assisted Living Facilities, (hereinafter “proposed rule”) is authorized by section 39-3305, Idaho Code. Section 39-3305, Idaho Code, grants the Board of Health and Welfare the authority to adopt, repeal and enforce such rules as may be necessary or proper to carry out the purpose and intent of the Idaho Board and Care Act which are designed to protect the health, safety and individual rights of residents in residential care or assisted living facilities. The Department is required, through negotiated rulemaking, to promulgate rules on minimum criteria for assessment, minimum criteria for negotiated service agreements, guidelines for the facility’s physical environment and location, criteria for the facility’s license, and remedy and enforcement provisions for noncompliance with statute.

The Department states that the proposed rule clarifies the documentation needed prior to admission to residential care and assisted living facilities and provides better consumer protection by having clear, easy-to-understand fee schedules and billing information. The Department states that this is in response to concerns expressed by advocates of the residents in such facilities with regard to marketing and billing materials provided by the facilities.

According to the Department, no fee or charge is imposed by the proposed rule. The Department 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. According to the Department, negotiated rulemaking was conducted with stakeholders, advocacy groups, the Idaho Health Care Association, Idaho Center for Assisted Living Association and the Community Care Council throughout the year. The Department states that the stakeholders were notified by means other than the Administrative Bulletin.

The Department states that a public hearing is scheduled for Friday, October 17, 2009, in Boise. The Department states that all written comments must be delivered to the Department on or before October 22, 2006.

## ANALYSIS

Some housekeeping changes are made by the proposed rule. Facilities that disagree with a cited core issue deficiency are directed to a website rather than to the Bureau of Facility Standards. Section 003. Incorporated by reference under the proposed rule is the Department's rule on aged or disabled waiver services contained in the Medicaid enhanced benefit rules. Section 004.08. Reference is made to a certification location and a certification website. Sections 005.06 and 07.

One new definition is added, "fee schedule," which is defined as "a price list specifying the cost for services and supplies the facility plans to charge a resident who resides in the facility. The fee schedule includes: charges for room, board, basic services and assistance, optional services and assistance, supplies and conveniences, and accompanying assessment, formula or methodologies used to calculate charges." Section 011.01. The proposed rule clarifies that the "licensing and survey agency" is the Licensing and Certification unit, which has certifying responsibilities. Section 011.16.

New requirements are imposed by the proposed rule on fee description, characterized as "a written description of the facility's fee schedule and how the resident's charges will be calculated." Required to be included in the fee description policy are how the fee schedule is explained and disclosed, how affected persons are to be notified of fee schedule changes, how that notification is to be documented, how fee increases that are a result of the resident's increased service needs are to be communicated and documented and how those charges are billed. Section 152.02.

The proposed rule clarifies that the written admission agreement is clear and easily understood and must be translated into a language the resident or his representative understands. Section 220. The fee schedule description component of the admission agreement must: be easily understood in clear and unambiguous language with descriptions and conditions that will cause an increase; include a statement that the Medicaid resident's share of liability is calculated by the Department; include the accompanying assessments, formulas or point systems used to calculate the resident's charges (not to exceed 20 pages); and include payment terms. Section 220.07. The proposed rule deletes the requirement that written notice to vacate the facility be given 30 calendar days prior to transfer or discharge on the part of either party (with exceptions). Existing section 220.07.c. These exceptions (a 15 day limitation on charges in case of the resident's death or transfer unless the residents belongings are not removed) have been moved to new section 220.14, termination of payment obligation.

The emergency transfer component of the admission agreement must provide the number of days, if any, the resident will be charged after he has left the facility due to an emergency

transfer. Section 220.13.b. The admission agreement must also contain the conditions for termination of the agreement (cross referencing section 221). Section 220.15.

The proposed rule provides that a resident's monthly rate may be increased with less than 30 days notice when the resident's condition changes. However, the resident can terminate the admission agreement upon receipt of the rate increase notice without the required 30 day notice. Section 221.01.h.

The proposed rule provides that certain basic supplies must be "on hand" for residents "as needed," including linens, towels, soap, toilet paper, first aid supplies, toothbrush and toothpaste, although the facility can bill private pay residents for use of supplies provided by the facility and residents may choose to purchase their own supplies rather than use those supplied by the facility. Section 430.06.

The 30 day notice of any change in a facility's fee schedule must be provided alternatively to the resident's "responsibility party" under the proposed rule. Under the existing rule, the 30 day notification was required only when there was an increase in the facility's monthly rates. Section 500.01. An exception to the 30 day notice requirement, as noted in section 221.01, is provided when a change in the resident's condition requires the facility to change services immediately. Under such circumstances, the resident, guardian, conservator or responsible party must be notified immediately of the change in condition and associated fee increase and must provide written notification of the change in services within seven days of the change in condition. Section 500.02.

The proposed rule requires the facility to provide the Department designated uniform disclosure statement to each person who requests information about the facility. That disclosure statement, along with the admission agreement and the fee schedule, must be provided to all potential residents prior to admission. Section 506.

The requirements for resident's rights have been augmented in the proposed rule by the requirement that policies and procedures be implemented to assure that the names, addresses and telephone numbers of designated advocacy groups are readily available in the facility with easy access for residents. Section 550.17.

The proposed rule recognizes that the written admission agreement and the fee schedule may be signed by the "responsible party" and that the "responsible party participated in the completion of the admission process. Sections 705.02, 03 and 05. The fee schedule must be signed prior to admission. Section 705.03.

## **SUMMARY**

The Department's proposed rule appears to be authorized under section 39-3305, Idaho Code.

cc: Department of Health and Welfare  
Tamera Prisock & Jamie Simpson

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO**

**DOCKET NO. 16-0322-0801**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency and the Board of Health and Welfare has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 39-3305, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**FRIDAY - OCTOBER 17, 2008 - 2:00 pm**

**DEPARTMENT OF HEALTH & WELFARE**  
**Medicaid Office - Conference Room D-East**  
**3232 Elder Street, Boise, ID**

The hearing site 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:

Advocates for residents of residential care and assisted living facilities have concerns with disclosure and clarity of marketing and billing materials provided by the facilities. In order to provide residents with informative information, requirements are being added to clarify the documentation needed prior to admission. The changes to these rules will provide better consumer protection by having clear, easy to understand fee schedules and billing information.

The changes include allowing termination of services when charges increase without notice or when a change in the resident's condition requires added services that increase costs, provide documentation requirements for pricing and billing, to allow ala carte billing of basic services and supplies for private pay residents, and to provide other consumer protection information to residents.

**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.

This rulemaking has no anticipated fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was conducted with stakeholders, advocacy groups, and the Idaho Health Care Association, Idaho Center for Assisted Living Association, and the Community Care Council throughout the year. A notice of negotiated rulemaking was not published in the Idaho Administrative Bulletin because stakeholders were notified through other means of communication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jamie Simpson at (208) 334-6626.

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 18th 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

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**THE FOLLOWING IS THE TEXT OF DOCKET 16-0322-0801**

**003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.**

**01. Administrative Appeals and Contested Cases.** Administrative appeals and contested cases are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-06)

**02. Informal Dispute Resolution Meeting.** If a facility disagrees with a deficiency cited for a core issue, it may request an informal dispute resolution meeting ~~to the Bureau of Facility Standards~~. The policy and procedure for requesting informal dispute resolution ~~is~~ are posted on the Licensing and Survey Agency website ~~at~~ <http://www.facilitystandards.idaho.gov> <http://www.assistedliving.dhw.idaho.gov>. (~~3-30-06~~)(    )

**004. INCORPORATION BY REFERENCE.**

The documents, referenced in Subsection 004.01 through 004.08 of these rules, are incorporated by reference as provided by Section 67-5229 (a), Idaho Code. These incorporated documents are available for public review upon request at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702, or when available on line at the websites provided in these rules. (3-30-06)

**01. National Fire Protection Association (NFPA) Documents.** The NFPA documents referenced in these regulations are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908; 1-800-344-3555; and online at <http://www.nfpa.org>. (3-30-06)

**02. Idaho Diet Manual.** This manual is available from the Idaho Dietetic Association, Ninth Edition, 2005, online at <http://eatrightidaho.org>. (3-30-06)

**03. Idaho Food Code.** IDAPA 16.02.19, "Food Safety and Sanitation Standards For Food Establishments," April 6, 2005. These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa16/0219.pdf>. (3-30-06)

**04. Americans with Disabilities Act Accessibility Guidelines.** 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is 1-800-514-0301. (3-30-06)

**05. Idaho Board of Nursing Rules.** IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa23/23index.htm>. (3-30-06)

**06. Idaho Board of Pharmacy Rules.** IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy." These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa27/27index.htm>. (3-30-06)

**07. International Building Code.** Edition 2003. This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: 888-422-7233 and online at <http://www.iccsafe.org>. (3-30-06)

**08. Idaho Medical Assistance Program Rules.** IDAPA 16.03.0910, "Medicaid ~~Basic~~ Enhanced Plan Benefits," Section ~~665320~~. These rules may be found online at <http://adm.idaho.gov/adminrules/rules/idapa16/030910.pdf>. (3-30-06)( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET 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. (3-30-06)

**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. (3-30-06)

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (3-30-06)

**04. Telephone.** (208) 334-5500. (3-30-06)

**05. Internet Website Address.** The Department Internet website address is: <http://www.healthandwelfare.idaho.gov>. (3-30-06)

**06. Licensing and ~~Survey Agency~~ Certification Location.** The ~~Department's~~ Licensing and ~~Survey Agency~~ Certification unit is located at 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. (3-30-06)( )

**07. Licensing and ~~Survey Agency~~ Certification Website.** ~~<http://www.facilitystandards.idaho.gov>~~ <http://www.assistedliving.dhw.idaho.gov>. (3-30-06)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.**

**01. Fee Schedule.** A price list specifying the cost for services and supplies the facility plans to charge a resident who resides in the facility. The fee schedule includes, charges for room, board, basic services and assistance, optional services and assistance, supplies and conveniences, and accompanying assessment, formula or methodologies used to calculate charges. ( )

**02. Follow-Up Survey.** A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. (3-30-06)

**03. Functional Abilities Assessment.** An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. (3-30-06)

**04. Governmental Unit.** The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. (3-30-06)

**05. Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. (3-30-06)

**06. Hands On.** Physical assistance to the resident beyond verbal prompting. (3-30-06)

**07. Hourly Adult Care.** Nonresident daily services and supervision provided by a facility to



- individuals who are in need of supervision outside of their personal residence for a portion of the day. (3-30-06)
- 078. Immediate Danger.** Any resident is subject to an imminent or substantial danger. (3-30-06)
- 089. Inadequate Care.** When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. (3-30-06)
- 0910. Incident.** An event that can cause a resident injury. (3-30-06)
- 101. Incident, Reportable.** A situation when a facility is required to report information to the Licensing and Survey Agency. (3-30-06)
- a.** Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. (3-30-06)
- b.** Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. (3-30-06)
- c.** Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. (3-30-06)
- d.** An injury due to resident-to-resident incident. (3-30-06)
- e.** An incident that results in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. (3-30-06)
- 112. Independent Mobility.** A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. (3-30-06)
- 123. Instrumental Activities of Daily Living.** The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. (3-30-06)
- 134. Legal Guardian or Conservator.** A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. (3-30-06)
- 145. License.** A permit to operate a facility. (3-30-06)
- 156. Licensing and Survey Agency.** The ~~section of the~~ Department unit also known as Licensing and Certification that is responsible for licensing, certifying, and surveying residential care or assisted living facilities. ~~(3-30-06)~~( )
- 167. Medication.** Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. (3-30-06)
- 178. Medication Administration.** It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. (3-30-06)
- 189. Medication Assistance.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. (3-30-06)

- ~~240.~~ **Medication Dispensing.** The act of filling, labeling and providing a prescribed medication to a resident. (3-30-06)
- ~~241.~~ **Medication, Self-Administration.** The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. (3-30-06)
- ~~242.~~ **Mental Disorders.** Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. (3-30-06)
- ~~223.~~ **Mental Illness.** Refers collectively to all diagnosable mental disorders. (3-30-06)
- ~~234.~~ **Monitoring Visit.** A visit by a representative of the Licensing and Survey Agency for the purpose of assuring residents are not in immediate danger. (3-30-06)
- ~~245.~~ **Neglect.** Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. (3-30-06)
- ~~256.~~ **Negotiated Service Agreement.** The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. (3-30-06)
- ~~267.~~ **Non-Core Issue.** Any finding of deficiency that is not a core issue. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. ADMISSION POLICIES.**

- 01. Admissions.** Each facility must develop written admission policies and procedures. The written admission policy must include; (3-30-06)
- a. The purpose, quantity and characteristics of available services; (3-30-06)
  - b. Any restrictions or conditions imposed because of religious or philosophical reasons. (3-30-06)
  - c. Limitations concerning delivery of routine personal care by persons of the opposite gender. (3-30-06)
  - d. Notification of any residents who are on the sexual offender registry and who live in the facility. The registry may be accessed at [http://www.isp.state.id.us/identification/sex\\_offender/public\\_access.html](http://www.isp.state.id.us/identification/sex_offender/public_access.html). (3-30-06)
  - e. Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. (3-30-06)
- 02. Fee Description.** A written description of ~~how fees will be handled by~~ the facility's fee schedule and how the resident's charges will be calculated. The following descriptions must be included in the policy: ~~(3-30-06)~~( )
- a. How the fee schedule is explained and disclosed to the resident, resident's legal guardian, conservator, or responsible party prior to a deposit payment or execution of the admissions agreement; ( )
  - b. How the resident, resident's legal guardian, conservator, or responsible party is notified of changes

to the fee schedule and how notification is documented. ( )

**c.** How an increase in fees that are a result of the resident's needs for increased services are communicated and documented to the resident, resident's legal guardian, conservator, or responsible party, and how those charges are billed. ( )

**03. Resident Funds Policies.** When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. (3-30-06)

**a.** A statement if the facility does not manage resident funds. (3-30-06)

**b.** If the facility manages resident funds, how funds are handled and safeguarded. (3-30-06)

**04. Resident Admission, Discharge, and Transfer.** The facility must have policies addressing admission, discharge, and transfer of residents to, from, or within the facility. (3-30-06)

**05. Policies of Acceptable Admissions.** Written descriptions of the conditions for admitting residents to the facility must include: (3-30-06)

**a.** A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; (3-30-06)

**b.** No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: (3-30-06)

**i.** A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; (3-30-06)

**ii.** A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; (3-30-06)

**iii.** A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; (3-30-06)

**iv.** A resident who is comatose, except for a resident who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; (3-30-06)

**v.** A resident who is on a mechanically supported breathing system, except for residents who use CPAP, (continuous positive airway pressure); (3-30-06)

**vi.** A resident who has a tracheotomy who is unable to care for the tracheotomy independently; (3-30-06)

**vii.** A resident who is fed by a syringe; (3-30-06)

**viii.** A resident with open, draining wounds for which the drainage cannot be contained; (3-30-06)

**ix.** A resident with a Stage III or IV pressure ulcer; (3-30-06)

**x.** A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; (3-30-06)

- xi. A resident who has MRSA (methicillin-resistant staphylococcus aureus) in an active stage (infective stage). (3-30-06)
- c. For any resident who has needs requiring a nurse, the facility must assure a licensed nurse is available to meet the needs of the resident. (3-30-06)
- d. A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; (3-30-06)
- e. A resident that is violent or a danger to himself or others; (3-30-06)
- f. Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; (3-30-06)
- g. Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and (3-30-06)
- h. Until July 1, 2010, Waivered Level 3 Small Facilities will be exempt from complying with the requirements under Subsection 152.05.g. of this rule, including the requirement to have at least a residential fire sprinkler system. On July 1, 2010, all Waivered Level 3 Small Facilities that admit or retain residents who are incapable of self-evacuation will be required to comply with the requirements under Subsection 152.05.g. of this rule. This includes being equipped with at least an operable residential fire sprinkler system. Any facility sold prior to July 1, 2010, must meet the requirements under Subsection 403.03 of these rules before a new license will be issued. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. REQUIREMENTS FOR ADMISSION AGREEMENTS.**

Prior to or on the day of admission, the facility and each resident or the resident's legal guardian or conservator will enter into a written admission agreement that is understandable and clear, and easily understood. The admissions agreement must be translated into a language the resident or his representative understands. The agreement must be signed by all involved parties. The admission agreement may be integrated within the Negotiated Service Agreement as described in Section 320 of these rules, provided that all requirements for the Negotiated Service Agreement and admission agreement are met. Admission agreements must include all items described under Subsections 220.01 through 220.13 of these rules. (~~3-30-06~~)( )

- 01. Services Provided.** Services the facility provides including: room, board, assistance with activities of daily living, supervision, assistance and monitoring of medications, laundering of linens owned by the facility, coordination of outside services, arrangement for routine, urgent, and emergency medical and dental services, emergency interventions, housekeeping services, maintenance, utilities, access to basic television in common areas, maintenance of self-help skills, recreational activities, and provisions for trips to social functions. (3-30-06)
- 02. Staffing.** Staffing patterns and qualification of staff on duty during a normal day. (3-30-06)
- 03. Notification of Liability Insurance Coverage.** The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident's admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writing. (3-30-06)
- 04. Medication Responsibilities.** The facility's and resident's roles and responsibilities relating to assistance with medications including the reporting of missed doses or those taken on a PRN basis. (3-30-06)
- 05. Resident Personal Fund Responsibilities.** Who is responsible for the resident's personal funds.

(3-30-06)

**06. Resident Belongings Responsibility.** Responsibility for protection and disposition of all valuables belonging to the resident and provision for the return of resident's valuables if the resident leaves the facility. (3-30-06)

**07. Fee Schedule Description and Emergency Transfers.** ~~The facility must provide an easily understood fee schedule in clear and unambiguous language with description and conditions under which emergency transfers will be made that fully disclose charges the resident will incur under normal circumstances and conditions that will cause charges to increase.~~ (3-30-06)( )

**a. Arrangement for payments.** ~~A Medicaid resident's fee schedule must include a statement that the resident's share of liability is calculated by the Department.~~ (3-30-06)( )

**b. How a partial month's resident fees are to be refunded when a resident no longer resides in the facility.** ~~The fee schedule must include the accompanying assessments, formulas, or point systems used to calculate the resident's charges and cannot exceed twenty (20) pages.~~ (3-30-06)( )

**c. Written notice to vacate the facility must be given thirty (30) calendar days prior to transfer or discharge on the part of either party except in the following situations.** ~~The fee schedules must include payment terms.~~ (3-30-06)( )

**i. In the case of the resident's death, fifteen (15) days notice is required. The date of death begins the fifteen (15) days notice requirement; and** (3-30-06)

**ii. In the case of an emergency condition that requires a resident's transfer, fifteen (15) days notice is required. The date of transfer starts the fifteen (15) days notice requirement.** (3-30-06)

**08. Resident Permission to Transfer Information.** Permission to transfer information from the resident's records to any facility to which the resident transfers. (3-30-06)

**09. Resident Responsibilities.** Resident responsibilities, as appropriate. (3-30-06)

**10. Restrictions on Choice of Care or Service Providers.** Any restriction on choice of care or service providers, such as pharmacy, home health agency, hospice agency, physician or authorized provider. (3-30-06)

**11. Advance Directive.** Written documentation of the resident's preference regarding the formulation of an Advance Directive in accordance with Idaho state law. When a resident has an Advanced Directive, a copy must be immediately available for staff and emergency personnel. (3-30-06)

**12. Notification of Payee Requirements.** Notification if the facility requires as a condition of admission that the administrator or an employee of the facility be named as payee; ~~and~~ (3-30-06)( )

**13. Other Information.** ~~Other information that the facility may deem appropriate.~~ **Emergency Transfers.** The facility must provide the following: (3-30-06)( )

**a. Descriptions of the conditions under which an emergency transfer will be made as described in Section 221 of these rules.** ( )

**b. The number of days, if any, the resident will be charged for after he has left the facility due to an emergency transfer.** ( )

**14. Termination of Payment Obligation.** ( )

**a. In the case of the resident's death, the facility cannot charge for more than fifteen (15) days after death, unless the resident's belongings are not removed.** ( )

**b.** In the case of an emergency transfer, the facility cannot charge for more than fifteen (15) days after transfer, unless the resident's belongings are not removed. ( )

**15.** Conditions for Termination of the Admission Agreement. The facility's admission agreements must include the conditions for termination of the agreement as described in Section 221 of these rules. ( )

**221. REQUIREMENTS FOR TERMINATION OF ADMISSION AGREEMENT.**

**01. Conditions for Termination of the Admission Agreement.** The admission agreement cannot be terminated, except under the following conditions: (3-30-06)

**a.** Giving the other party thirty (30) calendar days written notice for any reason; (3-30-06)

**b.** The resident's death; (3-30-06)

**c.** Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; (3-30-06)

**d.** The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307, Idaho Code, and Subsection 152.05 of these rules; (3-30-06)

**e.** Nonpayment of the resident's fees; (3-30-06)

**f.** When the facility can not meet resident needs due to changes in services, in house or contracted, or inability to provide the services; or (3-30-07)

**g.** Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. (3-30-06)

**h.** When a resident's condition changes, the resident's monthly rate may be increased by the facility with less than thirty (30) days notice. The resident can terminate the admissions agreement upon the receipt of the rate increase notice without the required thirty (30) day notice. ( )

**02. Facility Responsibility During Resident Discharge.** The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. (3-30-06)

**03. Resident's Appeal of Involuntary Discharge.** A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. (3-30-06)

**a.** Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. (3-30-06)

**b.** This notice must be in writing and in a language and manner the resident or his representative can understand. (3-30-06)

**04. Written Notice of Discharge.** The written notice of discharge must include the following: (3-30-06)

**a.** The reason for the discharge; (3-30-06)

**b.** Effective date of the discharge; (3-30-06)

**c.** A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; (3-30-06)

- d.** The name and address of where the appeal must be submitted; (3-30-06)
  - e.** The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and (3-30-06)
  - f.** The name, address and telephone number of CO-AD, for residents with developmental disabilities or mental illness. (3-30-06)
  - g.** If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies. (3-30-06)
  - h.** When the notice does not contain all the above required information, the notice is void and must be reissued. (3-30-06)
- 05. Receipt of Appeal.** Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**430. REQUIREMENTS FOR FURNISHINGS, EQUIPMENT, SUPPLIES, AND BASIC SERVICES.**

Each facility must provide at no additional cost to the resident: (3-30-06)

**01. Common Shared Furnishings.** Appropriately designed and constructed furnishings to meet the needs of each resident, including reading lamps, tables, and comfortable chairs or sofas; all items must be in good repair, clean, and safe. (3-30-06)

**02. Resident Sleeping Room Furnishings.** Comfortable furnishings and individual storage, such as a dresser, for personal items for each resident in each sleeping room; all items must be in good repair, clean, and safe. (3-30-06)

**03. Resident Bed.** Each resident must be provided his own bed, which will be at least thirty-six (36) inches wide, substantially constructed, clean, and in good repair. Roll-away beds, cots, folding beds, or double bunks are prohibited. Bed springs must be in good repair; and clean and comfortable. Bed mattresses must be standard for the bed, clean and odor free. A pillow must be provided. (3-30-06)

**04. Resident Telephone Privacy.** The facility must have at least one (1) telephone that is accessible to all residents. The telephone must be placed in such a manner as to provide the resident privacy while using the telephone. (3-30-06)

**05. Basic Services.** The following are basic services to be provided by the facility ~~at no additional cost to the resident:~~ room, board, activities of daily living services, supervision, assistance and monitoring of medications laundering of linens owned by the facility, coordination of outside services, arrangement for emergency transportation, emergency interventions, first aid, housekeeping services, maintenance, utilities, and access to basic television in common areas. ~~(3-30-06)(\_\_\_\_\_)~~

**06. Basic Supplies.** ~~The following are to be supplied by~~ The facility ~~at no additional cost to~~ must have the following items on hand for the residents as needed: linens, towels, wash cloths, soap, shampoo, comb, hairbrush, toilet paper, sanitary napkins, first aid supplies, electric razors or other means of shaving, toothbrush, and toothpaste. ~~(3-30-06)(\_\_\_\_\_)~~

**a.** The facility must regularly provide these supplies to clients for the Department at no additional

cost. ( )

b. The facility can bill private pay residents for use of supplies provided by the facility. ( )

c. Residents may choose to purchase their own supplies rather than use those supplied by the facility. ( )

07. **Resident Furnishings.** If a resident chooses to provide his own furnishings, the facility must assure that the resident's furnishings meet the minimum standards as identified in Subsections 430.01 through 430.06 of these rules. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. REQUIREMENTS FOR NOTICE OF ~~MONTHLY~~ CHANGE TO FEE ~~INCREASE~~ SCHEDULE.**

01. **Notification of Change.** The resident or resident's legal guardian, ~~or~~ conservator, or responsible party must be notified in writing of any increase change in the facility's monthly rates fee schedule at least thirty (30) calendar days prior to ~~such a raise~~ the change taking effect. (3-30-06)( )

02. **Rates for Services.** A change in the resident's condition may require the facility to change services immediately. A thirty (30) day notice is not required when change in services and associated fees increase are due to change in the resident's condition. The facility must immediately notify the resident, guardian, conservator, or responsible party of the change in condition and associated fees increase. The facility must notify the resident, guardian, conservator, or responsible party in writing of the change of services and associated fee increase within seven (7) days of the resident's change of condition. ( )

501. -- 504. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**506. REQUIREMENT FOR UNIFORM DISCLOSURE STATEMENT.**

The facility must provide the Department-designated uniform disclosure statement to each person who requests information about the facility. The admission agreement, the fee schedule, and the uniform disclosure statement are required to be provided to all potential residents prior to admissions to the facility. ( )

5067. -- 509. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. REQUIREMENTS FOR RESIDENTS' RIGHTS.**

The administrator must assure that policies and procedures are implemented to assure that residents' rights are observed and protected: (3-30-06)

01. **Resident Records.** The facility must maintain and keep current a record of the specific information on each resident. Upon request a resident must be provided access to information in his record. (3-30-06)

a. A copy of the resident's current Negotiated Service Agreement and physician or authorized provider's order; (3-30-06)



- b.** Written acknowledgement that the resident has received copies of the rights; (3-30-06)
- c.** A record of all personal property and funds that the resident has entrusted to the facility, including copies of receipts for the property; (3-30-06)
- d.** Information about any specific health problems of the resident that may be useful in a medical emergency; (3-30-06)
- e.** The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; (3-30-06)
- f.** Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record; and (3-30-06)
- g.** The current admission agreement between the resident and the facility. (3-30-06)
- 02. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups. (3-30-06)
- 03. Humane Care and Environment.** (3-30-06)

  - a.** Each resident has the right to humane care and a humane environment, including the following: (3-30-06)

    - i. The right to a diet that is consistent with any religious or health-related restrictions; (3-30-06)
    - ii. The right to refuse a restricted diet; and (3-30-06)
    - iii. The right to a safe and sanitary living environment. (3-30-06)
  - b.** Each resident has the right to be treated with dignity and respect, including: (3-30-06)

    - i. The right to be treated in a courteous manner by staff; (3-30-06)
    - ii. The right to receive a response from the facility to any request of the resident within a reasonable time; and (3-30-06)
    - iii. The right to be communicated with, orally or in writing, in a language they understand. If the resident's knowledge of English or the predominant language of the facility is inadequate for comprehension, a means to communicate in a language familiar to the resident must be available and implemented. There are many possible methods such as bilingual staff, electronic communication devices, family and friends to translate. The method implemented must assure the resident's right of confidentiality, if the resident desires. (3-30-06)
- 04. Personal Possessions.** Each resident has the right to: (3-30-06)

  - a.** Wear his own clothing; (3-30-06)
  - b.** Determine his own dress or hair style; (3-30-06)
  - c.** Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity; and (3-30-06)
  - d.** Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property. (3-30-06)
- 05. Personal Funds.** Residents whose board and care is paid for by public assistance will retain, for

their personal use, the difference between their total income and the applicable board and care allowance established by Department rules. (3-30-06)

**a.** A facility must not require a resident to deposit his personal funds with the facility; and (3-30-06)

**b.** Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph. (3-30-06)

**06. Management of Personal Funds.** Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows: (3-30-06)

**a.** The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a non-interest bearing account or petty cash fund; (3-30-06)

**b.** The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record; and (3-30-06)

**c.** Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the Department, the remaining balance of funds must be refunded to the Department. (3-30-06)

**07. Access and Visitation Rights.** Each facility must permit: (3-30-06)

**a.** Immediate access to any resident by any representative of the Department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician; (3-30-06)

**b.** Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives; (3-30-06)

**c.** Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and (3-30-06)

**d.** Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (3-30-06)

**08. Employment.** Each resident must have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident must be consistent with state and federal law. (3-30-06)

**09. Confidentiality.** Each resident must have the right to confidentiality of personal and clinical records. (3-30-06)

**10. Freedom from Abuse, Neglect, and Restraints.** Each resident must have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints. (3-30-06)

**11. Freedom of Religion.** Each resident must have the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others. (3-30-06)

**12. Control and Receipt of Health-Related Services.** Each resident must have the right to control his receipt of health related services, including: (3-30-06)

**a.** The right to retain the services of his own personal physician, dentist, and other health care professionals; (3-30-06)

**b.** The right to select the pharmacy or pharmacist of his choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility; (3-30-06)

**c.** The right to confidentiality and privacy concerning his medical or dental condition and treatment; and (3-30-06)

**d.** The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter. (3-30-06)

**i.** The facility must document the resident and his legal guardian have been informed of the consequences of the refusal; and (3-30-06)

**ii.** The facility must document that the resident's physician or authorized provider has been notified of the resident's refusal. (3-30-06)

**13. Grievances.** Each resident must have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. (3-30-06)

**14. Participation in Resident and Family Groups.** Each resident must have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility. (3-30-06)

**15. Participation in Other Activities.** Each resident must have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. (3-30-06)

**16. Examination of Survey Results.** Each resident must have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Licensing and Survey Agency with respect to the facility and any plan of correction in effect with respect to the facility. (3-30-06)

**17. Posting of Advocacy Groups.** The names, addresses, and telephone numbers of advocacy groups must be readily available in the facility with easy access for residents. Information for the following groups will be available: ( )

**a.** Local adult protection or advocacy group; ( )

**b.** Local ombudsman for the elderly, or long-term care; ( )

**c.** Co-Ad, Inc.; ( )

**d.** Idaho Attorney General Consumer Protection Division; ( )

**e.** Idaho Legal Aid Services Senior Legal Hotline; ( )

**f.** Idaho Alliance for Mental Illness; and ( )

**g.** The State Licensing and Certification Agency. ( )

**178. Access by Advocates and Representatives.** A residential care or assisted living facility must

permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to: (3-30-06)

- a. Visit, talk with, and make personal, social, and legal services available to all residents; (3-30-06)
- b. Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals; (3-30-06)
- c. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, that may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation; (3-30-06)
- d. Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights; (3-30-06)
- e. Communicate privately and without restrictions with any resident who consents to the communication; and (3-30-06)
- f. Observe all common areas of the facility. (3-30-06)

**189. Access by Protection and Advocacy System.** A residential care or assisted living facility must permit advocates and representatives of the protection and advocacy system designated by the governor under 42 U.S.C. Section 15043 and 42 U.S.C. Section 10801 et seq., access to residents, facilities, and records in accordance with applicable federal statutes and regulations. (3-30-06)

**190. Access by the Long Term Care Ombudsman.** A residential care or assisted living facility must permit advocates and representatives of the long term care ombudsman program pursuant to 42 U.S.C. Section 3058, Section 67 5009, Idaho Code, and IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program," access to residents, facilities and records in accordance with applicable federal and state law, rules, and regulations. (3-30-06)

**201. Transfer or Discharge.** Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay. In non-emergency conditions, the resident must be given at least thirty (30) calendar days notice of discharge. A resident has the right to appeal any involuntary discharge. (3-30-06)

**212. Citizenship Rights.** Each resident has a right to be encouraged and assisted to exercise rights as a citizen, including the right to be informed and to vote. (3-30-06)

**223. Advanced Directives.** Residents have the right to be informed, in writing, regarding the formulation of an advanced directive to include applicable State law, Section 39-4510, Idaho Code. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. RESIDENT BUSINESS RECORDS.**

Resident business records must contain the records described in Subsection 705.01 through 705.07 of these rules. (3-30-06)

**01. Individual Responsible for Payment.** Name, address, and telephone number of the individual responsible for payment. (3-30-06)

**02. Written Admissions Agreement.** Written admission agreement that is signed and dated by the administrator, the resident, ~~or his~~ legal guardian, ~~or~~ conservator, or responsible party. (~~3-30-06~~)(    )

**03. ~~Payment Fee Schedule.~~** A copy of the ~~payment fee schedule and fee structure~~ signed and dated by the resident, ~~or his~~ legal guardian, ~~or~~ conservator, ~~if such is separate from the admission agreement~~ or responsible party prior to admission. ~~(3-30-06)~~(\_\_\_\_)

**04. Resident Rights.** A signed copy of the resident's rights as identified in Section 550 of these rules or a signed and dated statement that the resident or his legal guardian or conservator has read and understands his rights as a resident of the facility. (3-30-06)

**05. Completion of Admissions Process.** Name, title of the facility representative who completed the admission process with the resident, legal guardian, ~~or~~ conservator, or responsible party. ~~(3-30-06)~~(\_\_\_\_)

**06. Agreement to Handle Resident's Funds.** If the facility handles resident funds, there must be a signed and dated written agreement between the facility and the resident or the resident's legal guardian or conservator setting the terms. Documentation of each financial transaction at the time the transaction occurs with signatures by the administrator or his designee and the resident. (3-30-06)

**07. Emergency Condition Advisory.** Documentation indicating that the resident has been advised of actions required under emergency conditions. (3-30-06)