

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 16.05.03 - Rules Governing Contested Case Proceedings and
Declaratory Rulings (Docket No. 16-0503-0801).

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
9-18-08. 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 10-17-08.

_____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: August 28, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.05.03 - Rules Governing Contested Case Proceedings and Declaratory Rulings (Docket No. 16-0503-0801) (Proposed)

This proposed rule docket 16-0503-0801 (hereinafter “proposed rule”) amends existing rules related to IDAPA chapter 16.05.03 dealing with Contested Case Proceedings and Declaratory Rulings. According to the Department, the substance and purpose of the proposed rule is to: (1) add a new administrative review option for child protection cases, to align with changes being proposed in IDAPA 16.06.01, “Rules Governing Family and Children’s Services,” and to provide for a review process prior to a person’s name being entered into the Child Protection Central Registry as requested by the Legislature; (2) add a new administrative review option for being added for Intensive Behavioral Intervention to provide an option for informal resolution of disputes related to certification, billing or reimbursement; (3) add a new appeal process that is specific to the Infant Toddler Program that will better ensure that the federal due process requirements under the Individuals with Disabilities Education Act are being followed; and (4) reflect recent changes in terminology, practice and statute.

According to the Department, the proposed rule is authorized pursuant to sections 16-107, 56-133, 56-135, 56-202, 56-204A, 56-216, 56-1003, 56-1004 and 56-1005, Idaho Code. Section 16-107, Idaho Code, designated the Department as the lead agency for administration of juvenile early intervention services and gives the Department the primary responsibility for writing all policy and procedures and administrative rule in conjunction with the State Interagency Coordinating Council which are necessary for implementation of those services.

Chapter 1, title 56, Idaho Code, is the chapter on payment for skilled and intermediate services. Section 56-133, Idaho Code, provides procedures for the administrative review process

for facilities which contract with the Department to provide services to recipients. Section 56-135, Idaho Code, grants the Department's Director authority to undertake remedies against facilities that is deemed deficient in, or no longer meets, any of specified requirements for participation.

Chapter 2, title 56, Idaho Code, is the public assistance law chapter. Section 56-202(b), Idaho Code, requires the Department's director to promulgate, adopt and enforce such rules and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code. Section 56-204A, Idaho Code, authorizes and directs the Department to maintain, by the adoption of appropriate rules, activities which, through social casework and the use of other appropriate and available resources, must embrace specified services provided for children. Section 56-216, Idaho Code, entitles an applicant or recipient aggrieved because of the Department's decision or delay in making a decision a right to appeal to the Department in the manner prescribed by the Department and affords such applicant or recipient reasonable notice and opportunity for a fair hearing.

Chapter 10, title 56, Idaho Code, provides additional responsibilities for the Department. Section 56-1003(3), Idaho Code, grants the Department's director, under rules, codes or standards adopted by him, broad authority for the general supervision of the promotion and protections of the life, health and mental health of the people of this state. Section 56-1004(1)(a), Idaho Code, provides additional broad powers to the Department's director for the orderly and efficient management of Departmental business and the custody, use and preservation of department records. Section 56-1005(8), Idaho Code, grants the Board of Health and Welfare, the authority to adopt, amend or repeal rules, codes and standards of the Department that are necessary and feasible in order to carry out its duties and responsibilities and to enforce the laws of this state.

According to the Department, no fee or charge is imposed by the proposed rule. The Department states that there is no anticipated fiscal impact to the state General Fund as a result of this rulemaking. No negotiated rulemaking was conducted because the rule changes and additions proposed are mostly technical and non-controversial in nature and are primarily updates that reflect recent changes in terminology, practice and statute, as well as minor clarifications and corrections.

Public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than August 20, 2008. Written comments will be accepted by the Department on or before August 27, 2008.

ANALYSIS

This memorandum will discuss only substantive changes. Organization and style changes will not be addressed.

Deleted as a legal authority under section 000 by the proposed rule is section 56-203, Idaho Code, which grants the Department a wide range of public assistance related powers, including entering into contracts and agreements with the federal government, cooperating with the federal government, county governments and other branches of government and agencies, entering into reciprocal agreements with other states, initiating and administering public assistance and social services for persons physically or mentally handicapped, establishing requirements of residence, defining persons entitled to medical public assistance, accepting the legal custody of children committed to the Department by district court, determining the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals and managing and operating the Idaho state school and hospital at Nampa.

The Title and Scope section 001 of the proposed rule deletes a description of what is included in a “contested case:” “appeals from providers of medical assistance and other services, and appeals relating to individuals’ benefits administered through the Division of Welfare, child support license suspension hearing, denial of a criminal history exemption, and tobacco citations pursuant to Sections 39-5705 and 39-5708, Idaho Code.”

A new definition for “administrative review” is provided by the proposed rule: “An informal review by a Division administrator or designee, to determine whether a Department decision is correct.” Section 010.01.

The proposed rule makes a specific exception for food stamps to the requirement that appeals be filed in writing. Under the proposed rule, an appeal must state the reason for disagreement with the Department’s action. Section 101.

As a matter of its burden of proof in child support matters, the proposed rule requires the Department first establish that arrearages are sufficient for child support enforcement action. The proposed rule also provides that the appellant has the burden of proof on asset seizure or other enforcement actions for failure to pay child support. Section 132.

Under the proposed rule, a petition for review by the Board of Health and Welfare must be filed with the Administrative Procedures Section not later than 14 days from the date the preliminary order was mailed. Under the existing rule, the deadline is 28 days. The proposed rule requires that the request identify all legal and factual bases of disagreement with the preliminary order. The proposed rule deletes the mandatory requirement that the appellant provide a transcript of the hearing and the “only questions of law” exception. Under the proposed rule, the Board chair (or designee) will determine whether a transcript is needed. If needed, the transcript will be provided by the party who requests review of the preliminary order. Section 151.

A new section 298 on Division of Welfare - Bureau of Child Support is created by the proposed rule that provides that “a notice of license suspension becomes final and effective unless an individual or representative files an appeal within twenty-one (21) days from the date

the decision is mailed.”

In actions relating to licensure or certification, billing or reimbursement, the proposed rule requires that an issue clarification and attempted resolution conference must be held within 28 days after the request for the administrative review. Section 300.

Under the proposed rule, an order for isolation or quarantine is a final agency action. Section 401.

New section 500 deals with child protection central registry administrative review conducted by the Division of Family and Community Services. An individual identified in a substantiated incident of child abuse, neglect or abandonment will automatically become effective and be placed on the Child Protection Central Registry unless the individual mails a request of administrative review with the Division’s administrator within 28 days from the date of notification. The request must identify the notification being protested and explain the reasons for disagreement. The administrator will determine if the incident was erroneously “substantiated” and will furnish a written decision.

New section 501 deals with intensive behavioral intervention administrative review. A provider in a certification, billing or reimbursement action must request an administrative review within 28 days after notice is mailed or the action becomes final and effective. The request must be signed, identify the challenged decision and state specifically the grounds on which the decision was erroneous. A clarification and attempt to resolve review conference must be held by the parties within 28 days after the request for administrative review. A second such conference may be scheduled if the Department determines that additional documentation is needed. The Department is required to provide a written decision. Any subsequent appeal is limited to the issues and documentation presented in the administrative review.

New section 502 deals with individual complaints regarding the infant toddler program. Parents or providers who disagree with decisions regarding the identification, evaluation or placement of a child or with the provision of appropriate early intervention services may request a hearing by filing a request with the Administrative Procedures Section. The request must be signed and contain specified information including a statement identifying the facts and reason for disagreement and a proposed resolution.

The Department must offer mediation services at its own expense. Such mediation must be held within 30 days after the request for a hearing before a trained, qualified and impartial mediator. A confidentiality agreement is required and information discussed in the mediation cannot be used in subsequent proceedings. In the event of a resolution, a signed mediation agreement is enforceable in state or federal court.

Whether or not mediation occurs, a hearing must be held and a written decision mailed within 30 days from the receipt of the request for a hearing. [Presumably, no hearing is held if the mediation is successful and a mediation agreement is signed.] A relevant evaluation or

recommendation that has not been disclosed at least five calendar days before the hearing may be barred by the hearing officer. Appropriate early intervention service being provided at the time of the decision will continue unless the parties agree otherwise. If the decision involves an application for initial services, any services that are not in dispute must be provided.

New section 503 deals with administrative complaints regarding the infant toddler program. An individual or organization (including those from another state) alleging a violation of Part C program and regulations at 34 CFR Part 303 may file a written, signed complaint with the Administrative Procedures Section against any public or private service provider setting forth the violated requirement and the facts supporting the complaint. The complaint can include an allegation that a provider failed to implement the decision after a hearing. The complaint must be filed within one year of the alleged violation except if there is a continuing violation or if the complaint request reimbursement or corrective action for a violation that occurred not more than three years prior to the date the complaint is received by the public agency.

The Department has 60 days (unless exceptional circumstances exist) from the receipt to investigate the complaint, receive additional information, make an independent determination whether a violation occurred and issue a written decision with findings, conclusions and explanation. If the Department concludes that appropriate services were or are not being provided, the decision must address remedial action, including the award of monetary reimbursement, if appropriate, or corrective action. The Department must also address appropriate future services for all infants and toddlers with disabilities and their families.

At section 503.04, the Department states: "No issue that is being addressed in the hearing process can be dealt with in the administrative complaint until the conclusion of the hearing. Any issue that is not part of the hearing must be resolved within the sixty (60) day review time. Issues that have already been decided in the hearing are final and binding on the complainant." Frankly, these statements do not make sense.

SUMMARY

The language at section 503.04 of the proposed rule is confusing. However, the proposed rule appears to be authorized by sections 16-107, 56-133, 56-135, 56-202, 56-204A, 56-216, 56-1003, 56-1004 and 56-1005, Idaho Code.

cc: Department of Health and Welfare
Sherri Kovach & Jeanne Goodenough

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS
AND DECLARATORY RULINGS

DOCKET NO. 16-0503-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-107, 56-133, 56-135, 56-202, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, August 20, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

A new administrative review option for child protection cases is being added to align with changes being proposed in IDAPA 16.06.01, "Rules Governing Family and Children's Services." As requested by the Legislature, this will provide for a review process prior to a person's name being entered into the Child Protection Central Registry.

A new administrative review option is being added for Intensive Behavioral Intervention (IBI) to provide an option for informal resolution of disputes related to certification, billing, or reimbursement.

A new appeal process is being added that is specific to the Infant Toddler Program. This process will better ensure that the federal due process requirements under the "Individuals with Disabilities Education Act" (IDEA) are followed for the Infant Toddler Program.

The chapter is also being updated to reflect recent changes in terminology, practice, and statute, including:

1. Revisions to the sections at the beginning of the chapter required by the Office of Administrative Rules;
2. Revisions to Board provisions including changing the number of days an appellant has to file a petition for a Board review to 14 days (same as a Director review) and adding a provision that allows the Board chair to determine whether the Board needs a transcript of a hearing on which they are going to hear oral argument;
3. Clarification that a Medicaid review conference must be held within 28 days of the request for an administrative review (in such a conference the disputing parties clarify and attempt to resolve the issues of contention). This provision prevents appellants from making lengthy delays in the administrative review process; and
4. Addition of other minor clarifications and corrections to existing text.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes and additions proposed are mostly technical and non-controversial in nature (e.g., additional due process provisions) and are primarily updates that reflect recent changes in terminology, practice, and statute, as well as minor clarifications and corrections.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Goodenough at (208) 334-5537.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 27, 2008.

DATED this 2nd day of July, 2008.

Sherri Kovach, Program Supervisor
DHW - Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0503-0801

000. LEGAL AUTHORITY.

The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings under Sections 16-107, 56-133, 56-135, 56-202, ~~56-203~~, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code. (~~4-11-06~~)(____)

001. TITLE AND SCOPE.

01. Title. ~~These~~ title of these rules ~~are to be cited fully as Idaho Department of Health and Welfare Rules;~~ is IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (~~3-30-01~~)(____)

02. Scope. These rules establish standards for petitions for rulemaking and declaratory rulings, and the conduct of contested cases. ~~Contested cases include appeals from providers of medical assistance and other services, and appeals relating to individuals' benefits administered through the Division of Welfare, child support license suspension hearings, denial of a criminal history exemption, and tobacco citations pursuant to Sections 39-5705 and 39-5708, Idaho Code.~~ (~~3-30-01~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS.

01. Administrative Review. An informal review by a Division Administrator or designee, to determine whether a Department decision is correct. (____)

~~02.~~ **Appellant.** A person or entity who files an appeal of Department action or inaction. (3-30-01)

~~03.~~ **Board.** The Idaho Board of Health and Welfare. (3-30-01)

~~034.~~ **Department.** The Idaho Department of Health and Welfare. (3-30-01)

- 045.** **Director.** The Director of the Department of Health and Welfare. (3-30-01)
- 056.** **Hearing Officer.** The person designated to preside over a particular hearing and any related proceedings. (3-30-01)
- 067.** **IPV.** Intentional program violation. (3-30-01)
- 078.** **Intervenor.** Any person, other than an appellant or the Department, who requests to be admitted as a party in an appeal. (3-30-01)
- 089.** **Party.** An appellant, the Department and an intervenor, if intervention is permitted. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

101. FILING OF APPEALS.

Appeals must be filed in writing and state the appellant's name, address and phone number, and the remedy requested, except that appeals of action relating to ~~Division of Welfare programs listed in Section 200 of these rules~~ Food Stamps may be made verbally to Department staff by an individual or representative. Appeals should be accompanied by a copy of the decision that is the subject of the appeal and state the reason for disagreement with the Department's action. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision have twenty-eight (28) days from the date the decision is mailed to file an appeal. An appeal is filed when it is received by the Department or postmarked within the time limits set forth in these rules. ~~(4-11-06)~~()

(BREAK IN CONTINUITY OF SECTIONS)

108. CONSOLIDATED HEARING.

When there are multiple appeals or a group appeal involving the same change in law, rules, or policy, the hearing officer will hold a consolidated hearing. ()

1089. -- 119. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

130. OPEN HEARINGS.

All contested case hearings are open to the public, unless ordered closed in the discretion of the hearing officer due to the sensitive nature of the hearing. The hearing officer can order that individuals be identified by initials or an alias if necessary to protect their privacy. At the discretion of the hearing officer, ~~W~~witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. ~~(3-30-01)~~()

(BREAK IN CONTINUITY OF SECTIONS)

132. BURDEN OF PROOF -- INDIVIDUAL BENEFIT CASES.

The Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification; revoke or limit a license; or to contest a tobacco violation under Sections 39-5705 and 39-5708, Idaho Code. In a child support matter, the Department must first establish that

arrearages are sufficient for child support enforcement action. The appellant has the burden of proof on all other issues, including establishing eligibility for a program, service or license; seeking an exemption required due to criminal history or abuse registry information; or seeking to avoid license suspension, asset seizure, or other enforcement actions for failure to pay child support. (4-11-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

151. PETITION FOR REVIEW BY BOARD OF HEALTH AND WELFARE.

In cases under the jurisdiction of the Board, either party may file a petition for review with the Administrative Procedures Section not later than ~~twenty-eight~~ fourteen (28~~14~~) days from the date the preliminary order was mailed. The request must identify all legal and factual bases of disagreement with the preliminary order. The Administrative Procedures Section will establish a schedule for the submission of briefs and if allowed, oral argument. Appellant must provide a transcript of the hearing before the hearing officer unless the appeal involves only questions of law. The Board chair or designee will determine whether a transcript of the hearing is needed and, if so, one will be provided by the party who requests review of the preliminary order. The Board members will exercise all of the decision-making power they would have had if they had presided over the hearing. (4-11-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

200. DIVISION OF WELFARE - APPEALS.

The provisions of this section of rules govern the conduct of individual benefit hearings to determine eligibility for benefits or services in the Division of Welfare, including IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho," IDAPA 16.03.04, "Rules Governing the Food Stamp Program in Idaho," IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program (ICCP)," IDAPA 16.04.14, "Rules Governing the Low Income Energy Assistance Program," IDAPA 16.04.02, "Idaho Telecommunication Service Assistance Program Rules," IDAPA 16.04.12, "Rules Governing the Individual and Family Grant Programs," and IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (3-30-01)(____)

201. DIVISION OF WELFARE - TIME FOR FILING APPEAL.

A decision issued by the Department in a Division of Welfare program will be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps has ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified in the particular program within thirty (30) days after the action would have been taken if the Department had acted in a timely manner. (4-11-06)(____)

202. DIVISION OF WELFARE - INFORMAL CONFERENCE.

An appellant or representative has the right to request an informal conference with the Department or Community Action Agency before the hearing date. This conference may be used to resolve the issue informally or to provide the appellant with information about the hearing or actions. The conference will not affect the appellant's right to a hearing or the time limits for the hearing. After the conference, the hearing will be held unless the appellant withdraws the appeal, or the Department withdraws the action contested by the appellant. (4-11-06)(____)

203. DIVISION OF WELFARE - WITHDRAWAL OF AN APPEAL.

An appellant or representative may withdraw an appeal upon written request to the hearing officer. (3-30-01)(____)

204. DIVISION OF WELFARE - TIME LIMITS FOR COMPLETING HEARINGS.

The Department must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing will be held within thirty (30) days from the date the hearing request is received. The Department will expedite hearing requests from appellants such as migrant farm workers

who are planning to move before the hearing decision would normally be reached. (4-11-06)()

205. DIVISION OF WELFARE - APPEAL OF AUTOMATIC ADJUSTMENTS.

An appeal will be dismissed if the hearing officer determines that the sole issue is an automatic grant adjustment, change in rule that affects benefit amount or eligibility, or reduction of Medicaid services under state or federal law.

(4-11-06)()

206. CONSOLIDATED HEARING (RESERVED).

~~When there are multiple appeals or a group appeal involving same change in law, rules, or policy, the hearing officer will hold a consolidated hearing.~~

(4-11-06)

207. DIVISION OF WELFARE - POSTPONEMENT OF FOOD STAMP HEARINGS.

An appellant may request, and be granted a postponement of a hearing, not to exceed thirty (30) days. The time limit for the Department's response ~~shall~~ will be extended for as many days as the hearing is postponed. (4-11-06)()

208. -- 249. (RESERVED).

250. DIVISION OF WELFARE - FOOD STAMPS DISQUALIFICATION HEARINGS.

A disqualification hearing will be scheduled when the Department has evidence that an individual has allegedly committed one (1) or more acts of intentional program violations (IPV).

(4-11-06)()

251. DIVISION OF WELFARE - COMBINING DISQUALIFICATION HEARING AND BENEFIT HEARING.

The hearing officer must consolidate a hearing regarding benefits or overpayment and a disqualification hearing if the issues are the same or related. The appellant must be notified that the hearings will be combined. (4-11-06)()

252. DIVISION OF WELFARE - RIGHT NOT TO TESTIFY.

The hearing officer must advise the appellant that he may refuse to answer questions during a disqualification hearing.

(4-11-06)()

253. DIVISION OF WELFARE - FAILURE TO APPEAR.

If an appellant or representative fails to appear at a disqualification hearing or cannot be located, the hearing will be conducted in his absence. The Department must present proof that advance notice of the hearing was mailed to the appellant's last known address. The hearing officer must consider the evidence and determine if an IPV occurred based solely on the information provided by the Department. The appellant has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. If an IPV had been established, but the hearing officer determines the appellant had good cause for not appearing, the previous decision will be void and a new hearing will be conducted. The previous hearing officer may conduct the new hearing.

(4-11-06)()

254. DIVISION OF WELFARE - STANDARD FOR DETERMINING INTENTIONAL PROGRAM VIOLATIONS.

The determination that an intentional program violation has been committed must be established by clear and convincing evidence that the appellant committed or intended to commit an IPV.

(4-11-06)()

255. -- 2997. (RESERVED).

298. DIVISION OF WELFARE - BUREAU OF CHILD SUPPORT.

A notice of license suspension becomes final and effective unless an individual or a representative files an appeal within twenty-one (21) days from the date the decision is mailed.

()

299. (RESERVED).

300. DIVISION OF MEDICAID - REQUEST FOR ADMINISTRATIVE REVIEW.

An action relating to licensure or certification, billing or reimbursement is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must be signed by the licensed administrator of the facility or by the provider, identify the challenged

decision, and state specifically the grounds for its contention that the decision was erroneous. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. ~~A written decision by~~ The Department will ~~be furnished~~ provide a written decision to the facility or provider. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

401. DIVISION OF HEALTH - REPORTABLE DISEASES.

An order for isolation or quarantine is a final agency action as set forth in Section 56-1003(7), Idaho Code. Any Other orders or restrictions as specified in IDAPA 16.02.10, "Idaho Reportable Diseases," ~~Section 065,~~ becomes final and effective unless an appeal is filed within five (5) working days after the effective date of the order or restriction.

(4-11-06)()

01. Conduct of Hearing. The Department may take whatever precautions and make whatever arrangements are necessary for the conduct of such hearing to insure that the health of participants and the public is not jeopardized. (3-30-01)

02. Review. Any person directly affected by an order or restriction may file exceptions to the Director's determination, which will be reviewed by the Board. The order or restriction remains effective unless rescinded by the Board. (4-11-06)

402. DIVISION OF HEALTH - FOOD ESTABLISHMENTS.

Appeal procedures will be as provided ~~in Section 861,~~ under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments-," Section 861.

(4-11-06)()

403. -- ~~499.~~ (RESERVED).

500. DIVISION OF FAMILY AND COMMUNITY SERVICES - CHILD PROTECTION CENTRAL REGISTRY ADMINISTRATIVE REVIEW.

A substantiated incident of child abuse, neglect, or abandonment will automatically become effective and be placed on the Child Protection Central Registry unless the individual identified in the notification files a request for an administrative review within twenty-eight (28) days from the date on the notification. The request for an administrative review must be mailed to the Family and Community Services (FACS) Division Administrator at the address listed in Subsection 006.02 of these rules. ()

01. Content of Request. The request for an administrative review must identify the notification being protested and explain the reasons for disagreement. Additional information may be provided for the Administrator's consideration. ()

02. Administrative Review. The FACS Division Administrator will consider all available information and determine whether the incident was erroneously determined to be "substantiated." The Administrator will furnish a written decision to the individual. ()

501. DIVISION OF FAMILY AND COMMUNITY SERVICES - INTENSIVE BEHAVIORAL INTERVENTION (IBI) ADMINISTRATIVE REVIEW.

01. Request for Administrative Review. An action relating to certification, billing, or reimbursement is final and effective unless the provider requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must be signed by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. The Department will provide a written decision to the facility or

provider. ()

02. Scope of Appeal Hearing. If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review will be admissible in the appeal hearing. ()

502. DIVISION OF FAMILY AND COMMUNITY SERVICES - INFANT TODDLER PROGRAM - INDIVIDUAL CHILD COMPLAINTS.

01. Individual Child Complaints. Parents or providers may request a hearing if they disagree with decisions regarding the identification, evaluation, or placement of a child, or, with the provision of appropriate early intervention services. A request must be filed with the Administrative Procedures Section identified in Section 005 of these rules, within twenty-eight (28) days from the date the decision is issued. The request for a hearing must identify: ()

a. The child's name, home address, and the early intervention program serving the child; ()

b. A statement identifying the facts and the reason for disagreement with the decision; ()

c. The name of the provider who is serving the child; ()

d. A proposed resolution; and ()

e. A dated signature of the person who is submitting the request. ()

02. Mediation. The Department must offer mediation services at Department expense, which must be held within thirty (30) days after the request for a hearing. A qualified and impartial mediator who is trained in effective mediation techniques will meet at a location convenient to both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere. ()

a. The parties must sign a confidentiality agreement before these discussions. Information discussed in the mediation cannot be used in any subsequent proceeding. ()

b. If there is a resolution, both parties must sign a mediation agreement, which is enforceable in state or federal court. ()

03. Due Process Hearings. The hearing must be held and a written decision mailed within thirty (30) days from the receipt of the request for a hearing, whether or not mediation occurs. The hearing officer may bar any party from introducing a relevant evaluation or recommendation that has not been disclosed at least five (5) calendar days before the hearing, unless the other party consents. ()

a. Current Services. Appropriate early intervention services that are being provided at the time of the decision will continue unless the parties agree otherwise. ()

b. Initial Application. If the decision involves an application for initial services, any services that are not in dispute must be provided. ()

503. DIVISION OF FAMILY AND COMMUNITY SERVICES - INFANT TODDLER PROGRAM - ADMINISTRATIVE COMPLAINTS.

01. Filing of Complaint. An individual or organization, including those from another State, may file a written, signed complaint against any public or private service provider, alleging a violation of the Part C program and regulations at 34 CFR Part 303. The complaint must identify what requirement has been violated and the facts upon which the complaint is based. Complaints can include an allegation that a provider failed to implement the decision after a hearing. The complaint must be filed with the Administrative Procedures Section identified in Section 005 of these rules within one (1) year of the alleged violation, except in the following circumstances: ()

- a.** If there is a continuing violation for that child or other children; or ()
- b.** If the complaint requests reimbursement or corrective action for a violation that occurred not more than three (3) years prior to the date the complaint is received by the public agency. ()

02. Investigation and Decision. Upon receipt, the Department has sixty (60) days, unless exceptional circumstances exist, to: ()

- a.** Investigate the complaint, including conducting an independent, on-site investigation if necessary; ()
- b.** Receive additional information about the complaint; ()
- c.** Make an independent determination whether a violation occurred; ()
- d.** Issue a written decision with findings, conclusions, and an explanation for the decision. ()

03. Resolution. If the Department concludes that appropriate services were or are not being provided, the decision must address remedial action including, if appropriate, the award of monetary reimbursement or corrective action appropriate to the needs of the child and family, technical assistance, and negotiation. The Department must also address appropriate future services for all infants and toddlers with disabilities and their families. ()

04. Extent of Review. No issue that is being addressed in the hearing process can be dealt with in the administrative complaint until the conclusion of the hearing. Any issue that is not part of the hearing must be resolved within the sixty (60) day review time. Issues that have already been decided in the hearing are final and binding on the complainant. ()

504. -- 999. (RESERVED).