

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 16.06.02 - Rules Governing Standards for Child Care Licensing

(Docket #16-0602-0802).

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
11-13-08. 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 12-12-08.

_____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 16.06.02 - Rules Governing Standards for Child Care Licensing (Docket No. 16-0602-0802 (Fee))

By this Fee Rule docket, the Department of Health and Welfare amends chapter 06.02 of title 16, Idaho Administrative Code (Docket No. 16-0602-0802)(hereinafter, "fee rule").

The Department states that the purpose of the fee rule is to clarify the application, inspection and criminal history fees charged for licensing. Additional housekeeping changes are also being undertaken.

The Department states that the fee rule is authorized by sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A and 56-1005(8), Idaho Code. Chapter 11, title 39, Idaho Code, deals with basic day care license. Section 39-1111(3), Idaho Code, authorizes and directs the Idaho Board of Health and Welfare to establish procedures necessary to implement the chapter provisions. Chapter 12, title 39, Idaho Code, is the Child Care Licensing Reform Act. Sections 39-1209, 39-1210, 39-1211 and 39-1213, Idaho Code, grants the Idaho board of health and welfare the power to promulgate appropriate rules to implement and force listed standards with regard to licensing children's agencies, children's residential care facilities, private foster homes and children's therapeutic outdoor programs. Chapter 10, title 56, Idaho Code, deals generally with the Department. Section 56-1003, Idaho Code, provides the Board of Health and Welfare broad rulemaking authority. Section 56-1004A, Idaho Code, adopted in 2005 and amended in 2006, deals specifically with criminal history and background checks. Subsection 56-1005(8), Idaho Code, permits the Board to adopt, amend or repeal rules of the Department.

According to the Department, the fee rule increases the fee to employees of child care licensee applicants who are required to have a criminal history and background check through the Department from \$45 to \$55, except for the initial licensee applicant. The Department does not anticipate a fiscal impact to the General Fund. The Department states that negotiated rulemaking

was not conducted because the changes are being made to bring the criminal history check requirement into compliance with IDAPA 16.05.06, "Criminal History and Background Checks."

The Department states a public hearing will be held if requested in writing by 25 persons, a political subdivision or an agency by October 15, 2008. All written comments must be delivered to the Department on or before October 22, 2008.

ANALYSIS

The fee rule deletes the statement that some of the purposes of the day care standards are to provide a statement of policy, provide exemption, define terms, designate licensing authorities and authorized the promulgation of rules. Section 300.01. The fee rule universally substitutes the term "inspection" for "application." The fee rule provides that the initial fire and health inspection fees are not refundable. Section 300.02.

The fee rule clarifies that criminal history check fees and application fees for renewal must be paid directly to the Department. Section 300.02.b. The fee rule also clarifies that the initial application for a basic day care license includes a \$45 criminal history check fee charge for each licensing applicant. Section 300.03.a.iii.

Unlicensed and previously licensed group day care facilities (caring for seven to twelve children) must be certified by obtaining a criminal history check for the applicant and staff. The fee for this criminal history check has been increased from \$45 to \$55 by the fee rule. Section 300.05.a.ii.

The fee rule provides that criminal history checks are required on employees, volunteers and all other individuals twelve years or older who have unsupervised direct contact with children in the care of day care centers, group day care facilities and family day care homes. Section 300.09. [Note: the 12 year or older requirement for a criminal history and background check in this fee rule is at variance with the 13 year and older self declaration requirement contained in Docket No. 16-0612-0802 dealing with individuals living in a home and in direct contact with children in the Idaho Child Care Program (ICCP).]

SUMMARY

The fee rule appears to be authorized by sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003 and 56-1004A, Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock & Lorraine Clayton

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING
DOCKET NO. 16-0602-0802 (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site 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:

To help assure the health and safety of children across the state, the Department has established standards for day care licensing and certification. These standards are being amended to clarify the application, inspection, and criminal history fees charged for licensing. Obsolete language is also being deleted.

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

This rulemaking increases the fee to employees of child care licensee applicants who are required to have a criminal history and background check through the Department. Under Section 56-1004A, Idaho Code, applicants are required to pay the cost of these checks which have increased from \$45 to \$55. Each individual required to complete a criminal history and background check will pay an extra \$10 with the exception of the initial licensee applicant.

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 not conducted because these changes are being made to bring the criminal history checks requirements into compliance with IDAPA 16.05.06, "Criminal History and Background Checks."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lorraine Clayton at (208) 334-5699.

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 19th day of August, 2008.

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

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0602-0802

300. STANDARDS FOR DAY CARE.

01. Purpose. The stated legislative purpose of Sections 39-1101 through 39-1117, Idaho Code, *enacted in 1987 and as amended in 1990, 1992 and 1994*, is to provide for minimum statewide day care licensing for children less than twelve (12) years of age. ~~The purpose is to provide a statement of policy, provide exemption, define terms, designate licensing authorities and authorize the promulgation of rules.~~ Persons with certain criminal backgrounds are prohibited from working in day care centers. Responsibilities for regulatory authority are divided between the Board, the state fire marshal, and the ~~district public health departments districts~~. As stated in Section 39-1101, Idaho Code: "It is declared to be the policy of the state to establish a minimum statewide system for the protection of children in day care centers. This system is intended to establish minimum standards, while still leaving primary responsibility for evaluation and selection of day care services with parents. The minimum standards established by this chapter ~~shall~~ are not to be construed as preempting more stringent regulation by county or city ordinance." (3-30-01)(____)

02. Fee Charged. Fees ~~shall be~~ are charged at the time of initial application for a basic day care license or certification. The fees will be used to cover the expenses for fire inspections, health inspections and criminal history and background checks. The initial ~~application inspection~~ fees ~~shall not be~~ are non-refundable. Basic day care licenses and certifications ~~shall be~~ are valid for a period of two (2) years. (3-30-01)(____)

a. Fees ~~shall~~ will also be charged at the time of application for renewal of a license or certification. An application for renewal must be filed every two (2) years prior to the expiration of a current basic day care license or certification in order for the current license or certification to remain valid, pending the completion of the appropriate inspections. Application and inspection fees for renewal ~~shall not be~~ are non-refundable. (3-30-01)(____)

b. Fees for initial ~~application inspection~~ and renewal of basic day care licenses and certifications ~~shall~~ must be paid directly to the inspecting fire and health ~~agencies, except for agencies.~~ †The criminal history checks that will fees and application fee for renewal must be paid directly to the Department. (3-30-01)(____)

c. The applicable license fee payable to the Department upon initial application or a renewal ~~shall~~ will be reduced for any day care facility which provides evidence that at least fifty percent (50%) of its staff is certified in infant/child first aid and cardiopulmonary resuscitation. (3-30-01)(____)

i. To receive such refund of monies paid to the Department for licensure or renewal, the applicant or owner/operator of such day care facility ~~shall~~ must submit to the Department day care licensing unit, at any time during the period of a valid license or certificate for day care, written documentation of the number of staff in the day care facility and that at least fifty percent (50%) of that staff is certified in infant/child first aid and cardiopulmonary resuscitation. (3-30-01)(____)

ii. Upon receipt of valid documentation that fifty percent (50%) of the staff of that day care facility is so certified, a payment equal to twenty-five percent (25%) of the licensing fee paid ~~shall~~ will be made to the applicant or owner/operator of such licensed day care facility. (3-30-01)(____)

03. Initial Application Fees for Basic Day Care License. All unlicensed and previously licensed day care centers caring for thirteen (13) or more children are required to submit an initial application for a basic day care license. The maximum fees for both unlicensed and previously licensed centers ~~shall~~ cannot exceed one hundred dollars (\$100) for a state license. (3-30-01)(____)

a. The following fees will be included with the initial application for a basic day care license: (3-30-01)

~~i. Criminal History Check – forty five dollars (\$45) per person payable to the Department, when applicable;~~ (3-30-01)

- ii. Health Inspection - thirty-five dollars (\$35) payable to the Health District; (3-30-01)
 - iii. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; and (3-30-01)
 - ~~ii.~~ *The fee of Criminal History Check* - forty-five dollars (\$45) for the criminal history check will be charged for each licensing applicant, ~~owner, operator, employee and volunteer at the day care center requiring a criminal history check~~ and ~~shall be~~ is separate ~~and apart~~ from the application fees for health and fire inspections. The fees for criminal history checks ~~shall be~~ are the responsibility of the individual or day care center with which they are associated. (~~3-30-01~~)()
 - b. Posting of license in a conspicuous place at the day care center is required. (3-30-01)
 - c. The Department shall obtain a criminal history check on only those applicants, owners, operators, employees or volunteers who have direct contact with the children in care and on all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. "Volunteers" when used in this chapter ~~shall~~ means only those persons who have direct unsupervised contact with children in care for more than twelve (12) hours in any one (1) month. (~~3-30-01~~)()
- 04. Application Fees for Renewal of Basic Day Care License.** A basic day care license must be renewed every two (2) years. The application fee for renewal of a license ~~shall~~ cannot exceed sixty dollars (\$60). The following fees will be included with an application for renewal of a basic day care license: (~~3-30-01~~)()
- a. Department - ten dollars (\$10) payable to the Department; (3-30-01)
 - b. Health Inspection - thirty dollars (\$30) payable to the Health District; and (3-30-01)
 - c. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)
 - d. It will be the responsibility of the applicant, owner, or operator of a day care center to ensure that a criminal history check is initiated within ten (10) days for staff having direct contact with children to include employees and volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (3-30-01)
- 05. Initial Application Fees for Certification.** All unlicensed and previously licensed group day care facilities caring for seven (7) to twelve (12) children ~~shall~~ are not ~~be~~ required to be licensed but ~~shall~~ must be certified by obtaining a fire inspection and criminal history check for applicant and staff. (~~3-30-01~~)()
- a. The following fees shall be included with the initial application for a state certification: (3-30-01)
 - i. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; (3-30-01)
 - ~~ii. Criminal History Check - forty five dollars (\$45) per person payable to the Department, when applicable; and~~ (~~3-30-01~~)()
 - iii. ~~The fee of Criminal History Check - forty~~ fifty-five dollars (~~\$45~~55) will be charged for each certification applicant, owner, operator, employee or volunteer at the group day care facility requiring a criminal history check and ~~shall be~~ is separate ~~and apart~~ from the application fee for a fire inspection and ~~shall be~~ is the responsibility of the individual or group day care facility. (~~3-30-01~~)()
 - b. The fire inspection certification and verification of the required criminal history check ~~shall~~ must be available for inspection on the premises. (~~3-30-01~~)()
 - c. The Department ~~shall~~ obtains a criminal history check on only those applicants, owners, operators, employees, or volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct

contact with children in care.

~~(3-30-01)~~(____)

06. Application Fee for Renewal of Certification. A certification must be renewed every two (2) years. The application fee for renewal of a certification ~~shall~~ will not exceed thirty dollars (\$30). The following fees will be included with the application for renewal of certification:

~~(3-30-01)~~(____)

a. Department - ten dollars (\$10) payable to the Department; and (3-30-01)

b. Fire Inspection - up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)

c. It will be the responsibility of the applicant, owner or operator of a group day care facility to ensure that any employees and volunteers having direct contact with children have, upon employment or assignment, a criminal history check initiated within ten (10) days for staff. (3-30-01)

07. Voluntary Compliance by Group Day Care Facilities for Basic Day Care License. A group day care facility may elect voluntarily to secure a basic day care license and must meet the same requirements as for day care centers. Group day care facilities wishing to apply for a basic day care license must comply in all cases with the requirements of a fire inspection, health inspection and criminal history check. Group day care facilities electing to secure a basic day care license ~~shall~~ will be charged the same fees as for day care centers. ~~(3-30-01)~~(____)

08. Family Day Care Homes. Family day care homes caring for six (6) or fewer children are not required to have a basic day care license or certification. A family day care home may, however, elect voluntarily to secure a basic day care license and must meet the same requirements as for day care centers. Family day care homes wishing to apply for a basic day care license must comply with the requirements of a fire inspection, health inspection and criminal history check, when required. Family day care homes electing to secure a basic day care license ~~shall~~ will be charged the same fees as for day care centers. ~~(3-30-01)~~(____)

09. Procedure for Criminal History Checks. The Department is hereby authorized to obtain and submit criminal history checks with fingerprints on applicants, owners, operators, employees and volunteers of day care centers, group day care facilities and family day care homes, when the home wishes to voluntarily comply with the requirements for a basic day care license. The criminal history check ~~shall be~~ is conducted ~~pursuant to~~ under Sections 39-1113 and 56-1004A, Idaho Code, and IDAPA 16.05.06, "Criminal History and Background Checks." ~~There shall be no additional fee charged for this criminal background check. Criminal history checks are required on employees, volunteers, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care.~~ Basic day care licenses, certifications and/or day care provider permits ~~shall~~ will be used as a means of verifying that no record has been found ~~pursuant to~~ under Sections 39-1113 and 39-1115(3), Idaho Code, on licensing and certification applicants, owners, operators, employees and volunteers requiring criminal history checks. ~~(3-30-01)~~(____)

10. Temporary Basic Day Care Licenses, Certifications, and Day Care Provider Permits. (3-30-01)

a. The Department may issue temporary basic day care license, temporary certifications and temporary day care provider permits to licensing or certification applicants pending the completion of the necessary day care inspections or criminal history checks. The Department may also issue temporary day care provider permits to day care providers who are owners, operators, employees and volunteers pending the completion of the criminal history check. All temporary basic day care licenses, temporary certifications and temporary day care provider permits ~~shall~~ will be issued under the following conditions: ~~(3-30-01)~~(____)

i. ~~Shall be~~ is issued for a period not to exceed one hundred twenty (120) days, unless otherwise extended by the Department. ~~(3-30-01)~~(____)

ii. Applicants, owners, operators, employees and volunteers requiring a criminal history check properly completing and signing a notarized self-declaration certifying that they have never been found guilty of or received a withheld judgement for any of the crimes enumerated in Sections 39-1113 and 39-1115(3), Idaho Code, pending the completion of the criminal history check. (3-30-01)

iii. All temporary basic day care licenses and certifications are conditional upon satisfactory day care facility inspections and applicants' satisfactory criminal history checks. (3-30-01)

iv. All temporary day care provider permits are conditional upon satisfactory criminal history checks. (3-30-01)

b. If a criminal history check on an applicant for licensing or certification or a currently licensed or certified day care facility discloses an owner, operator, employee or volunteer with a guilty conviction or a withheld judgement ~~pursuant to~~ under Sections 39-1113 and 39-1115(3), Idaho Code, the individual ~~shall~~ must be suspended immediately from continued employment or volunteering. The day care facility and individual ~~shall~~ will be in violation of these rules and subject to a misdemeanor if the individual is retained after receiving notice by certified mail from the Department that the individual has been found guilty of or received a withheld judgement for an offense ~~pursuant to~~ under Sections 39- 1113 and 39-1115(3), Idaho Code. (~~3-30-01~~)(____)

11. Responsibilities of Applicants, Owners or Operators. It ~~will be~~ is the responsibility of the applicant, owner or operator of a day care facility to maintain a personnel record on each employee and volunteer at the day care facility having direct contact with children. The personnel record ~~shall~~ must include date of initial employment or assignment, date of termination or extended leave from employment or assignment, a copy of the day care provider permit and any other information which may be necessary to establish day care facility and personnel compliance with Section 39-1105, Idaho Code. It ~~shall also be~~ is the responsibility of the applicant, owner or operator of a day care facility to ensure new employees and volunteers having direct contact with children, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children, submit to the Department within ten (10) days from the date of initial employment or assigned self-declaration certifying they have not been found guilty of or received a withheld judgement for the crimes ~~pursuant to~~ under Section 39-1115(3), Idaho Code. Two (2) fingerprint cards (FD-258) with fingerprints for personnel requiring criminal history checks ~~shall~~ must also be completed within ten (10) days from the date of initial employment or assignment. (~~3-30-01~~)(____)

12. Immunizations Required. ~~Pursuant to~~ Under Section 39-1118, Idaho Code, the immunizations required and the manner and frequency of their administration are ~~referenced in Idaho Department of Health and Welfare Rules,~~ provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho." (~~3-30-01~~)(____)

13. Employee Training. The owner operator of a day care center ~~shall~~ must ensure through documentation that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date. (~~3-30-01~~)(____)

14. Preemption. These rules do not preempt more stringent local regulation or requirements.(3-30-01)