

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 16.06.12 - Rules Governing The Idaho Child Care Program (ICCP) (  
(Docket No. 16-0612-0802).

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 24, 2008

**SUBJECT:** Department of Health and Welfare - IDAPA 16.06.12 - Rules Governing The Idaho Child Care Program (ICCP)(Docket No. 16-0612-0802)(Proposed).

By this proposed rule docket (Docket No. 16-0612-0802)(hereinafter, “proposed rule”), the Department of Health and Welfare seeks to amend chapter IDAPA chapter 16.06.12, dealing with Rules Governing the Idaho Child Care Program (ICCP). According to the Department, the proposed rule is authorized pursuant to section 56-202, Idaho Code. Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho’s public assistance law. Section 56-203, Idaho Code, gives the Department a number of powers, none of which are directly related to the proposed rule.

Not cited as authority by the Department is section 56-1004A, Idaho Code, which authorizes the Department to conduct criminal history and background checks on individuals who provide care or services to vulnerable adults or children and who are identified in rule as being required to have such checks and requires the Department to promulgate rules to further define those individuals who are to have such checks.

The purpose of the proposed rule, according to the Department, is to require providers and individuals receiving ICCP payments and living in the home with direct contact with children have a criminal history and background check.

According to the Department, no fee or charge is imposed by the proposed rule and there will be no fiscal impact to the General Fund. The Department states that negotiated rulemaking was not conducted because this rule is being amended to protect the health and safety of children receiving ICCP payments. The Department states that a public hearing was held on October 10, 2008, in Boise. All written comments must be delivered to the Department on or before October 22, 2008.

## ANALYSIS

The proposed rule creates a new section 009, Criminal History and Background Check Requirements. ICCP providers are required to have a criminal history and background check in compliance with IDAPA 16.05.06, Criminal History and Background checks. Section 009.01. The provider must receive a clearance prior to becoming an ICCP provider. Section 009.02. The employer or provider has the discretion to allow an individual to provide care or services on a provisional basis once the application has been completed, notarized and reviewed by the employer for any disqualifying crimes or relevant records and the employer determines that the individual does not pose a health and safety risk to vulnerable participants. Section 009.04.a. Checks must be conducted on the following individuals who have direct contact with children: child care center and group child care employees and volunteers; family child care providers, relative child care providers and in-home providers; and any individual age 13 or older living in the home. Section 009.04.

Individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the check is completed and the Department issues a clearance. Section 009.04.b.

Any individual age 13 or older living in the home where care is provided must complete a self-declaration form, be fingerprinted and not have any crimes designated in rule. Section 009.03. After the self declaration has been completed and no designated crime has been disclosed, individuals living in the home with direct contact with children are allowed contact. Section 009.04.c.

The Department can require a check at any time on any individual providing child care to an ICCP eligible child. Section 009.04 [sic]. Once an individual has received a clearance, any additional criminal convictions must be reported to the Department by the agency or provider upon learning of the conviction. Section 009.05 [sic].

Section 805 of the proposed rule has been amended to remove child care provider self-declaration provisions. The new provisions added to this section mirror the provisions contained in new section 009, discussed above. However, rather than the self-declaration requirements for individuals age 13 years or older living in the home with direct contact with the ICCP eligible child, section 805 requires compliance and clearance under IDAPA 16.05.06.

## SUMMARY

The Department's proposed rule changes appear to be authorized under sections 56-202(b) and 56-1004A, Idaho Code.

cc: Department of Health and Welfare  
Tamara Prisock & Genie Sue Weppner

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.06.12 - IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-0802**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

**Friday -- October 10, 2008 - 9:00 am**

**DEPARTMENT OF HEALTH & WELFARE  
450 West State Street, Conference Rm. 7-A  
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:

To protect and better ensure the health and safety of children receiving ICCP benefits, the Department is requiring that providers and individuals living in the home with direct contact with children, to have a criminal history and background check if they are receiving ICCP payments. These rules are being amended to provide the criminal history and background checks requirements.

**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 state general funds associated with this rulemaking. The cost of the criminal history and background check is the responsibility of the applicant or provider.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because these rules are being amended to protect the health and safety of children receiving Idaho Child Care Program benefits.

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

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

DATED this 20th day of August, 2008.

DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
PO 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 OF DOCKET 16-0612-0802

007. -- 0098. (RESERVED).

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History and Background Check.** Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**02. ICCP Provider is Approved.** The ICCP provider must have a completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. ( )

**03. Individual in the Home.** Any individual age thirteen (13) or older living in the home where care is provided must complete a self-declaration form, be fingerprinted, and can not have any designated crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**04. Availability to Work or Provide Service.** ( )

**a.** The employer or provider, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. ( )

**b.** Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. ( )

**c.** Individuals living in the home who have direct contact with children are allowed contact after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**04. Applicants, Providers, and Individual Living in the Home Subject to Criminal History Check Requirements.** The following applicants and providers must receive a criminal history and background check: ( )

**a.** Child care center employees and volunteers who have direct contact with children; ( )

**b.** Group child care employees and volunteers who have direct contact with children; ( )

**c.** Family child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; ( )

**d.** Relative child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; and ( )

**e.** In-home child care provider. ( )

**04. Criminal History and Background Check at Any Time.** The Department can require a criminal history and background check at any time on any individual providing child care to an ICCP eligible child. ( )

**05. Additional Criminal Convictions.** Once an individual has received a criminal history clearance,

any additional criminal convictions must be reported by the agency or provider to the Department when the agency learns of the conviction. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**805. ~~CONVICTION OR WITHHELD JUDGMENT~~ CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENT.**

~~A child care provider must sign a self-declaration attesting he has not been convicted or received a withheld judgement for any of the following crimes: homicide; kidnaping; arson; assault and battery; sexual abuse of a child; a sex crime as defined in Chapter 66, Title 18, Idaho Code; rape as defined in Chapter 61, Title 18, Idaho Code; injuring a child as defined in Section 18-1501, Idaho Code; selling or bartering a child as defined in Section 18-1511, Idaho Code; sexually abusing a child as defined in Section 18-1506, Idaho Code; sexually exploiting a child as defined in Section 18-1507, Idaho Code; or any similar provision in another jurisdiction. Providers, employees and individuals age thirteen (13) or older living in the home who have direct contact with or provide care to children eligible for ICCP benefits must comply with the requirements and receive clearance under IDAPA 16.05.06, "Criminal History and Background Checks."~~ (4-2-08)( )