

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. 16-0612-0803).

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. 16-0612-0803) (Proposed)

By this proposed rule docket (Docket No. 16-0612-0803)(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 sections 56-202 and 56-203, Idaho Code. Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho’s public assistance law. Section 56-203, Idaho Code, gives the Department a number of powers, none of which are directly related to the proposed rule.

Not cited as authority is section 56-209h(12), Idaho Code, which gives the Department the authority to promulgate rules to carry out the policies and purposes of section 56-209h dealing with administrative remedies in the public assistance programs administered by the Department.

The purpose of the proposed rule, according to the Department, is to comply with the fraud investigation and enforcement remedies imposed by SB1340 (2008) and SB1341 (2008). According to the Department, such compliance requires amending the rule to update definitions, reporting requirements, documentation requirements, protections for allegations of fraud and abuse, and enforcement actions.

SB1340 (2008) amended section 56-209h, Idaho Code, to add definitions for “intentional program violation,” “provider” and “public assistance program;” modify the definition of “claim;” clarify that the section applied to public assistance programs; provide for barring individuals or entities from public assistance programs for intentional program violations; and appeal rights. SB1341 (2008) amended section 56-227, Idaho Code, to establish a fraud control program in the Department to investigate suspected fraud relating to applications for public assistance benefits and the receipt of such benefits.

According to the Department, no fee or charge is imposed by the proposed rule and there is no anticipated fiscal impact to the General Fund greater than \$10,000. The Department states that negotiated rulemaking was not conducted because this rule is being amended to add investigation and enforcement remedies to meet legislative requirements. 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 notifies that the Department has the additional authority to audit, investigate and take enforcement action under IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse or Misconduct." Section 008.

Six new definitions are advanced by the proposed rule: "abuse or abusive," "claim," "fraud or fraudulent," "intentional program violation (IPV)," "knowingly, known, or with knowledge," and "managing employee." Sections 010.02, 05, 12, 15 and 17 and 011.01. The proposed rule's definitions of "claim" and "fraud or fraudulent" are identical to the statutory definitions at sections 56-209h(1)(b) and (c), Idaho Code. The remainder of these definitions are adapted from the definitions contained in section 56-209h(1), with modifications. The primary modification is to properly specify that the definition applies to the Idaho Child Care program which, of course, is the subject of the rule. However, some of the modifications add to or delete from the statutory wording. Wordsmithing statutory definitions in rule should be discouraged since it may create ambiguity and foster litigation.

The proposed rule removes the requirement that a child must be immunized according to a cited rule to be eligible for child care benefits. Existing section 105.01. Section 39-4801, Idaho Code, requires that the parent or guardian of a school-aged child provide a statement regarding the child's immunity to certain childhood diseases as prescribed by the Board of Health and Welfare to school officials.

Under the proposed rule, the provider's usual and customary rates, rather than the billed cost of child care under the existing rule, becomes the alternative to the local market rate as the basis for provider payment. Section 501.01. The description of "usual and customary rates" has been clarified by the proposed rule to state that such rate may not exceed what is usually and customarily charged for child care to persons not entitled to ICCP benefits. Section 501.02.

The proposed rule mandates that providers are responsible for ensuring that nonexempt families pay their share of the child costs and cannot waive or defer such costs. Section 502.01. Under the proposed rule, providers and those eligible for child care assistance are responsible for reporting changes which may affect child care benefits. Section 600.01

Under the proposed rule, overpayments are "recouped." Section 701. A provider is required to pay interest on an overpayment at the statutory rate from the date of the final

determination of the amount owed for services, unless the overpayment was due to Department error. Section 701.01. The proposed rule deletes provisions requiring provider repayment for failure to timely report changes, permitting the negotiation of a repayment schedule, and the loss of eligibility to receive ICCP payments for failure to comply with a repayment schedule. Existing section 701.01.

New section 704, denial of payment, lists the reasons for which the Department may deny payment: a determination that claims for child care services were not provided; the services were not properly documented; the services were provided contrary to the rule or the provider agreement; and the failure to provide immediate access to the provider's records as mandated by the rule.

New section 750, termination of provider status, lists the reasons for which the Department may terminate the provider agreement or otherwise deny provider status for a period up to five years from the date the Department's action becomes final: knowingly submitting an incorrect claim; submitting a fraudulent claim; knowingly making a false statement or representation of material facts in a required document; failure to provide immediate access to required documentation upon written request by the Department; repeated or substantial failure to comply with the rules; knowingly violating any material term or condition of the provider agreement; failure to repay any overpayments or claims previously found to be improperly obtained (applies, as well, to a managing employee or a person who had an ownership or control interest in the entity); engaging in fraudulent or abusive conduct in the delivery of child care services (applies, as well, to a managing employee); and failing to meet the specifically required qualifications.

New section 751, refusal to enter into an agreement, lists the reasons for which the Department may refuse to enter into a provider agreement - the provider: has been convicted of a felony relating to its involvement in a public assistance program or other specified crime; has failed to repay the Department monies previously determined to be owed; has a pending investigation for program fraud or abuse; was the managing employee, officer or owner of an entity whose provider agreement was terminated under section 710 [Note: there is no section 710 under either the existing or pending rule; perhaps the reference should be to section 750.]; or has a current exclusion from participation in federal programs by the Office of the Inspector General.

New section 752, provider notification, requires the Department to send written notice of its decision to the provider or person when it determines actions defined in sections 702 through 711, containing specified information, including the right to appeal. [Note: under the proposed rule, section 706 through 711 are reserved.] New section 753, notice to state licensing authorities, requires the Department to promptly notify all appropriate licensing authorities of the Department's actions, including the facts and circumstances of that action. The Department may request certain action be taken and that the Department be informed of the action taken.

The proposed rule deletes the requirement that providers submit a written statement of

compliance with certain health and safety requirements, although compliance with those requirements is still mandated. Section 802. Added to the list of health and safety requirements is the requirement that the provider obtain immunization records for all children enrolled and attending child care. Section 802.11. As noted above, the proposed rule removes the requirement that a child must be immunized according to a cited rule to be eligible for child care benefits.

New section 810, documentation of services and access to records, requires providers to generate documentation at the time of service sufficient to support reimbursement for child care services, including: records of attendance, billing records and receipts, specified policies, and electronic or manual sign-in records or child and adult food care program records. These records must be kept for three years from the date the child care was provided. Section 810.01. The provider must grant the Department immediate access to these records for review and copying during normal business hours. Section 810.02. If the Department makes a written requests for copies, they must be provided within 20 working days unless an extension is granted. Failure to timely provide copies is considered a refusal. Section 810.03. The Department may remove copies of these records from the provider's premises. Section 810.04.

SUMMARY

The Department's proposed rule changes appear to be authorized under sections 56-202(b) and 56-209h(12), 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. 16-0612-0803

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: 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:

The 2008 Legislature adopted legislation, SB1340 and SB1341, amending the Department's statutes concerning fraud investigations and enforcement remedies. In order to investigate allegations and complaints of fraud and abuse under ICCP, these rules are being amended to provide:

1. Definitions of terms defining fraudulent types of activities and terms used for enforcement actions;
2. Requirements for reporting for providers and parents; records and documentation of services, payment rates; documentation to aid in investigations and protections for allegations of fraud and abuse;
3. Clarification of immunization record requirements and discontinue parent provision of documentation of immunization as an eligibility requirement for ICCP benefits;
4. Enforcement actions for denial of payments, recoupment for overpayments, termination of provider status, refusal to enter into an agreement, notification to licensing authorities, and provider notification of Department actions.

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.

NEGOTIATED RULEMAKING: Pursuant to 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules are being amended to add investigation and enforcement remedies to meet requirements in 2008 legislation.

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.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone (208) 334-6558 fax
dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET 16-0612-0803

~~007.~~—~~009.~~ (RESERVED).

008. AUDIT, INVESTIGATION AND ENFORCEMENT.

In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse or Misconduct." ()

~~007.~~—~~009.~~ (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH L.

The following definitions and abbreviations apply to this chapter: (4-2-08)

01. AABD. Aid to the Aged, Blind, and Disabled. (4-2-08)

02. Abuse or Abusive. Provider practices that are inconsistent with sound fiscal, business, or child care practices and result in an unnecessary cost to the Idaho Child Care Program, in reimbursement that is not necessary, or that fail to meet professional recognized standards for child care, or result in physical harm, pain, or mental anguish to children. ()

023. Child. Any person under age eighteen (18) under the care of a parent, or a person eighteen (18) years of age or older who is claimed on tax returns as a dependent. (4-2-08)

034. Child Care. Care, control, supervision, or maintenance of a child provided for compensation by an individual, other than a parent, for less than twenty-four (24) hours in a day. (4-2-08)

05. Claim. Any request or demand for payment, or document submitted to initiate payment, for items or services provided under the Idaho Child Care Program. ()

046. Department. The Idaho Department of Health and Welfare or its designee. (~~7-1-99~~)()

057. Earned Income. Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. (4-2-08)

068. Employment. A job paying wages or salary at federal or state minimum wage, whichever is applicable, including work paid by commission or in-kind compensation. Full or part-time participation in a VISTA or AmeriCorps program is also employment. (4-2-08)

079. Foster Care. The twenty-four (24) hour substitute care of children provided in a foster home by persons who may or may not be related to a child. Foster care is provided in lieu of parental care and is arranged through a private or public agency. (4-2-08)

0810. Foster Child. A child placed for twenty-four (24) hour substitute care by a private or public agency. (4-2-08)

~~09~~**11. Foster Home.** The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute care to six (6) or fewer children. (4-2-08)

12. Fraud or Fraudulent. An intentional deception or misrepresentation made by a person with knowledge that the deception could result in some unauthorized benefit to himself or some other person. ()

103. Good Cause. The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-99)

14. In Loco Parentis. Acting “in loco parentis” means a person who acts in place of a parent, assuming care and custody of a child by a formal or informal agreement with the child’s parent. (4-2-08)

15. Intentional Program Violation (IPV). An intentional false or misleading action, omission, or statement made in order to qualify as a provider or recipient in the Idaho Child Care program or to receive program benefits or reimbursement. ()

126. Job Training and Education Program. A program designed to provide job training or education. Programs may include high school, junior college, community college, college or university, general equivalency diploma (GED), technical school, and vocational programs. To qualify as a Job Training and Education Program, the program must prepare the trainee for employment. (4-2-08)

17. Knowingly, Known, or With Knowledge. With respect to information or an action about which a person has actual knowledge of the information or action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. ()

138. Licensed Practitioner of the Healing Arts. A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. (4-2-08)

011. DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.

The following definitions and abbreviations apply to this chapter of rules: (4-2-08)

01. Managing Employee. A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an organization or entity. ()

~~04~~**2. Minor Parent.** A parent under the age of eighteen (18). (4-2-08)

~~02~~**3. Non-Recurring Lump Sum Income.** Income received by a family in a single payment, not expected to be available to the family again. (7-1-99)

~~03~~**4. Parent.** A person responsible for a child because of birth, adoption, step-parent, or guardianship; or a person acting in loco parentis. (4-2-08)

~~04~~**5. Preventive Services.** Services needed to reduce or eliminate the need for protective intervention. Preventive services permit families to participate in activities designed to reduce or eliminate the need for out-of-home placement of a child by the Department. (4-2-08)

~~05~~**6. Prospective Income.** Income a family expects to receive within a given time. This can be earned or unearned income. (7-1-99)

~~06~~**7. Provider.** An individual, organization, agency, or other entity providing child care. (7-1-99)

~~07~~**8. Relative Provider.** Grandparent, great-grandparent, aunt, uncle, or adult sibling by blood or current marriage who provides child care. (4-2-08)

- ~~089.~~ SSI. Supplemental Security Income. (4-2-08)
- ~~0910.~~ **Special Needs.** Any child with physical, mental, emotional, behavioral disabilities, or developmental delays identified on an Individual Education Plan (IEP) or an Individualized Family Service Plan (IFSP). (4-2-08)
- ~~101.~~ **TAFI.** Temporary Assistance for Families in Idaho. (4-2-08)
- ~~142.~~ **Unearned Income.** Unearned income includes retirement, interest child support, and any income received from a source other than employment or self-employment. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

105. ELIGIBLE CHILD.

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

~~01- **Immunizations Requirements.** A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. (4-2-08)~~

~~021.~~ **Citizenship or Alien Status Requirement.** A child must be one (1) of the following: (4-2-08)

a. A citizen; (4-2-08)

b. Living lawfully in the United States. (4-2-08)

~~032.~~ **Child's Age Requirement.** A child must be under thirteen (13) years of age, with the following exceptions: (4-2-08)

a. A child thirteen (13) years of age or older may be eligible for child care benefits if he meets one (1) or more of the following criteria: (4-2-08)

i. A child is eligible for child care benefits until the month of his eighteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. (4-2-08)

ii. A child may be eligible for child care benefits until the month of his eighteenth birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. (4-2-08)

b. A child who is eligible under Subsection 105.03.a. may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

501. AMOUNT OF PAYMENT.

Child Care payments will be based on Subsections 501.01 through 501.04 of these rules. (4-2-08)

01. Payment Rate. Payment will be based on the lower of the ~~billed cost of child care,~~ provider's usual and customary rates or the local market rate. ~~(4-2-08)()~~

a. The local market rate is determined from a survey of providers' child care charges which is conducted every two years. The local market rate is set at the seventy-fifth percentile and updated as the budget allows. (4-2-08)

b. Each Region has a separate local market rate. Payment rates will be determined by the location of the child care facility. (4-2-08)

c. If the child care facility is not in Idaho, the local market rate will be the rate where the family lives. (4-2-08)

d. The rate survey will be conducted at least every two (2) years. (4-2-08)

02. Usual and Customary Rates. Rates charged by the child care provider must not exceed the usual and customary rates charged ~~to all families~~ for child care to persons not entitled to receive benefits under ICCP. (4-2-08)()

03. In-Home Care. Parents are responsible to pay persons providing care in the child's home the minimum wage, as required by the Fair Labor Standards Act (29 U.S.C. 206a) and other applicable state and federal requirements. Department payments must not exceed the lower of the hourly federal minimum wage or actual cost of care. (4-2-08)

04. Payments. Payments will be issued directly to eligible providers. A warrant may be issued to a parent only when the parent provides proof the provider was paid in full, and no longer provides child care for the family. (4-2-08)

502. SLIDING FEE SCHEDULES.

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and may not waive or defer these costs. (4-2-08)()

01. Poverty Rates. Poverty rates will be one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines published in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-2-08)

02. Calculating Family Payment. Families must pay the provider their share of costs for child care services which include the families' co-payments and any charges not paid by the Department. Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment listed in the following table: (4-2-08)

03. ICCP Sliding Fee Schedule.

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
	7%	\$499	\$599	\$699	\$799	\$899	\$1,099	\$1,199	\$1,399
11%	\$799	\$1,099	\$1,299	\$1,499	\$1,699	\$1,999	\$2,199	\$2,399	\$2,599
16%	\$949	\$1,249	\$1,449	\$1,699	\$1,999	\$2,299	\$2,549	\$2,799	\$3,049
21%	\$1,099	\$1,399	\$1,599	\$1,899	\$2,299	\$2,599	\$2,899	\$3,199	\$3,499

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
26%	\$1,165	\$1,465	\$1,731	\$2,031	\$2,399	\$2,731	\$3,031	\$3,365	\$3,665
31%	\$1,231	\$1,531	\$1,863	\$2,163	\$2,499	\$2,863	\$3,163	\$3,531	\$3,831
36%	\$1,299	\$1,599	\$1,999	\$2,299	\$2,599	\$2,999	\$3,299	\$3,699	\$3,999
41%	\$1,308	\$1,616	\$2,008	\$2,316	\$2,625	\$3,016	\$3,325	\$3,716	\$4,025
46%	\$1,317	\$1,633	\$2,017	\$2,333	\$2,651	\$3,033	\$3,351	\$3,733	\$4,051
51%	\$1,326	\$1,650	\$2,026	\$2,350	\$2,677	\$3,050	\$3,377	\$3,750	\$4,077
56%	\$1,335	\$1,667	\$2,035	\$2,367	\$2,703	\$3,067	\$3,403	\$3,767	\$4,103
61%	\$1,344	\$1,684	\$2,044	\$2,384	\$2,729	\$3,084	\$3,429	\$3,784	\$4,129
66%	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
71%	\$1,386	\$1,743	\$2,100	\$2,457	\$2,814	\$3,171	\$3,528	\$3,885	\$4,242
76%	\$1,416	\$1,780	\$2,144	\$2,508	\$2,872	\$3,236	\$3,600	\$3,964	\$4,328
81%	\$1,446	\$1,817	\$2,188	\$2,559	\$2,930	\$3,301	\$3,672	\$4,043	\$4,414
86%	\$1,476	\$1,854	\$2,232	\$2,610	\$2,988	\$3,366	\$3,744	\$4,122	\$4,500
91%	\$1,506	\$1,891	\$2,276	\$2,661	\$3,046	\$3,431	\$3,816	\$4,201	\$4,586
96%	\$1,540	\$1,932	\$2,323	\$2,715	\$3,106	\$3,498	\$3,889	\$4,281	\$4,672

(4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

600. DEPARTMENT ACTION ON RESPONSIBILITY TO REPORT CHANGES.

The Department must take action on the following reported changes: Providers and those eligible for child care assistance are responsible for reporting changes which may affect child care benefits. (4-2-08)()

01. Change in Income or Hours of Activity. If a change in income or hours of qualifying activity results in a decrease in the amount of the child care benefit, the Department will make the change effective the month following the month the change is reported. (4-2-08)

02. Change in Billed Amount. If the billed amount of child care results in a decrease in the amount of the child care benefit, the Department will make the changes effective in the month the changes were reported. (4-2-08)

03. Change Resulting in an Increase. If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the changes were reported. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

701. RECOUPMENT OF OVERPAYMENTS AND RECOVERY.

An overpayment for child care services may occur as the result of Department, family or provider error, intentional program violations (IPV), or fraud, as established by a judicial or administrative determination as described in Section 56-227, Idaho Code.

01. Recoupment of Overpayments. The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recovery Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (4-2-08)()

~~**01. Provider Repayment Requirement.** A provider must repay any overpayment resulting from the provider's failure to report changes within ten (10) days as required under Section 808 of these rules. A provider may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of eligibility to receive ICCP payments. Ineligibility will continue until the provider repays the overpayment or a new repayment agreement is negotiated with the Department. (4-2-08)~~

02. Parental Repayment Requirement. A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section 201 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

704. DENIAL OF PAYMENT.

The Department may deny payment for the reasons described in Subsections 704.01 through 704.04 of this rule. ()

01. Services Not Provided. Any or all claims for child care services it determines were not provided. ()

02. Services Not Documented. Child care services not documented by the provider as required in Subsection 810.01 of these rules. ()

03. Contrary to Rules or Provider Agreement. Child care services provided contrary to these rules or the provider agreement. ()

04. Failure to Provide Immediate Access to Records. The Department may deny payment when the provider does not allow immediate access to records as provided in Subsection 810.02 of these rules. ()

7045. FUNDING RESTRICTIONS.

If a funding shortfall is projected, the Department may reduce child care benefits to ensure that ICCP operates within its financial resources. (4-2-08)

7056. -- 7949. (RESERVED).

ENFORCEMENT REMEDIES
(Sections 750 through 799)

750. TERMINATION OF PROVIDER STATUS.

Under Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period up to five (5) years from the date the Department's action becomes final to any individual or entity providing ICCP. ()

01. Submits an Incorrect Claim. Submits a claim with knowledge that the claim is incorrect. ()

02. Fraudulent Claim. Submits a fraudulent claim. ()

03. Knowingly Makes a False Statement. Knowingly makes a false statement or representation of material facts in any document required to be maintained or submitted to the Department. ()

04. Immediate Access to Documentation. Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. ()

05. Non-Compliance With Rules and Regulations. Fails repeatedly or substantially to comply with the rules and regulations governing Idaho child care payments. ()

07. Violation of Material Term or Condition. Knowingly violates any material term or condition of its provider agreement. ()

08. Failure to Repay. Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. ()

09. Fraudulent or Abusive Conduct. Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of child care services. ()

10. Failure to Meet Qualifications. Fails to meet the qualifications specifically required by rule or by any applicable licensing entity. ()

751. REFUSAL TO ENTER INTO AN AGREEMENT.

The Department may refuse to enter into a provider agreement for the reasons described in Subsections 711.01 through 711.06 of this rule. ()

01. Convicted of a Felony. The provider has been convicted of a felony relating to their involvement in a public assistance program or of a crime listed in Section 805 of these rules. ()

02. Committed an Offense or Act Not in Best Interest of a Child Care Participants. The provider has committed an offense or act which the Department determines is inconsistent with the best interests of ICCP participants. ()

03. Failed to Repay. The provider has failed to repay the Department monies which had been previously determined to have been owed to the Department. ()

04. Investigation Pending. The provider has a pending investigation for program fraud or abuse. ()

05. Terminated Provider Agreement. The provider was the managing employee, officer, or owner of an entity whose provider agreement was terminated under Section 710 of these rules. ()

06. Excluded Individuals. The provider has a current exclusion from participation in federal programs by the Office of Inspector General List of Excluded Individuals and Entities. ()

752. PROVIDER NOTIFICATION.

When the Department determines actions defined in Sections 702 through Section 711 of these rules are appropriate, it will send written notice of the decision to the provider or person. The notice will state the basis for the action, the length of the action, the effect of the action on that person's ability to provide services under state and federal programs, and the person's appeal rights. ()

753. NOTICE TO STATE LICENSING AUTHORITIES.

The Department will promptly notify all appropriate licensing authorities having responsibility for licensing, of a Department action, and the facts and circumstances of that action. The Department may request certain action be taken and that the Department be informed of actions taken. ()

754. -- 799. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

802. HEALTH AND SAFETY REQUIREMENTS.

All providers must ~~submit a written statement that they~~ comply with the health and safety requirements listed in Subsections 802.01 through 802.10 of these rules. The provider must agree to a health and safety inspection. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. ~~(4-2-08)~~()

01. Age of Provider. All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (4-2-08)

02. Sanitary Food Preparation. Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (4-2-08)

03. Food Storage. All food served in child care facilities must be stored to protect it from potential contamination. (4-2-08)

04. Hazardous Substances. Medicines, cleaning supplies, and other hazardous substances must be stored out of the reach of children. (4-2-08)

05. Emergency Communication. A telephone or some type of emergency communication system is required. (4-2-08)

06. Smoke Detectors, Fire Extinguishers, and Exits. A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (4-2-08)

07. Hand Washing. Each provider must wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (4-2-08)

08. CPR/First Aid. Providers must insure that at all times children are present at least one (1) adult on the premises has current certification in pediatric rescue breathing and first aid treatment from a certified instructor. (4-2-08)

09. Health of Provider. Each provider must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. (4-2-08)

10. Child Abuse. Providers must report suspected child abuse to the appropriate authority. (4-2-08)

11. Immunization Records. Providers must obtain immunization records for all children enrolled and attending child care. ()

(BREAK IN CONTINUITY OF SECTIONS)

~~809. — 999.~~ (RESERVED).

810. DOCUMENTATION OF SERVICES AND ACCESS TO RECORDS.

01. Documentation of Services. Providers must generate documentation at the time of service sufficient to support the reimbursement for child care services. Documentation must be legible and must be retained for a period of three (3) years from the date the child care was provided. Documentation to support child care services includes: ()

- a. Records of attendance;** ()
- b. Billing records and receipts;** ()
- c. Policies regarding sign-in procedures, and others as applicable; and** ()
- d. Sign-in records, electronic or manual, or the Child and Adult Food Care Program records.** ()

02. Immediate Access to Records. Providers must grant to the Department and its agents, immediate access to records for review and copying during normal business hours. These records are defined in Subsection 810.01 of this rule. ()

03. Copying Records. The Department and its authorized agents may copy any record as defined in Subsection 810.01 of this rule. The Department may request in writing to have copies of records supplied by the provider. The requested copies must be furnished within twenty (20) working days after the date of the written request, unless an extension of time is granted by the Department for good cause. Failure to timely provide requested copies will be a refusal to provide access to records. ()

04. Removal of Records From Provider's Premises. The Department and its authorized agents may remove from the provider's premises copies of any records defined in Subsection 810.01 of this rule. ()

811. -- 999. (RESERVED).