

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 16.06.13 - Rules Governing Emergency Assistance for Families and Children (Docket No. 16-0613-0801) (Proposed).

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 8-7-08. 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 9-4-08.

_____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: July 17, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.06.13 - Rules Governing Emergency Assistance for Families and Children (Docket No. 16-0613-0801) (Proposed)

By this docket (Docket No. 16-0613-0801 (hereinafter, “proposed rule”), the Department of Health and Welfare seeks to amend chapter IDAPA chapter 16.06.1, dealing with rules Governing Emergency Assistance for Families and Children. According to the Department, the proposed rule is authorized pursuant to sections 56-201 and 56-202(b), Idaho Code, and by Title IV-A of the Social Security Act.

Section 56-201, Idaho Code, is the definition section for chapter 2, title 56, Idaho Code, addressing public assistance law. That section provides no rulemaking authority. Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho’s public assistance law. Title IV-A of the Social Security Act is titled “Block Grants to States for Temporary Assistance for Needy Families.” Title IV, Part A is the most widely recognized welfare program and is referred to as Temporary Assistance for Needy Families (TANF). The Department does not cite or provide a copy of any specific provision of Title IV-A relied upon and as required by section 67-5223(1), Idaho Code.

The purpose of the proposed rule, according to the Department, is to simplify, streamline and increase the efficiency of the administration of emergency assistance funds by updating the definition section, clarifying conditions that make up an emergency condition, clarifying who is the service population, reducing the complexity of eligibility criteria and ensuring compliance with federal law.

According to the Department, no fee or charge is imposed by the proposed rule and there is no anticipated fiscal impact to the state general fund related to this rulemaking. The Department states that negotiated rulemaking was conducted with the Notice of Negotiated Rulemaking being published in the April 2, 2008, Administrative Bulletin, Volume 08-4, at page 20. The Department does not state with whom the negotiated rulemaking was conducted.

The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than August 20, 2008. All written comments must be delivered to the Department on or before August 27, 2008.

ANALYSIS

Many of the changes in Docket No. 16-0613-0801 are technical and serve to clarify language. The substantive definition change is the addition of “Destitution” to mean “[a] state of being in extreme need from lacking possessions or resources.” IDAPA 16.06.13.010.07.

This definition of “destitution” is incorporated into section 100 on emergency condition to provide that a family has an emergency condition when “[a] child or youth has unmet short-term needs affecting the child’s health, safety, or well-being that place the child at risk of **destitution** as defined in Section 010 of these rules.” IDAPA 16.06.13.100.02.c. As amended, this section now includes “youth” (defined as “[a]n individual between eighteen (18) and twenty-one (21) years of age”) and deletes the reference to being “in a vulnerable situation because of the lack of parental care or insufficient resources immediately available to meet” the child’s basic needs.

The proposed rule amends section 300 by deleting the description of emergency assistance payments as “non-recurrent” and deleting reference to “Placement Payments,” which previously “may be made for shelter care, foster care, residential or group care of a child and may include food, clothing and supervision unless the child has assistance provided under Title IV-E finding.” The Department does not indicate whether the deleted “placement payments” are no longer available to otherwise eligible children or youth or are subsumed under the broader “emergency payments” or some other program.

SUMMARY

The Department’s proposed rule changes appear to be authorized under section 56-202(b), Idaho Code.

cc: Sherri Kovach & Scott Burlingame, Department of Health and Welfare

IDAPA 16 - DEPARTMENT OF HEALTH AND WEPARE

16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0613-0801

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 56-201, 56-202(b), Idaho Code, and Title IV-A of the Social Security Act.

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 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:

The proposed rule changes will simplify, streamline, and increase the efficiency of the administration of Emergency Assistance (EA) funds by updating the definition section, clarifying conditions that make up an emergency condition, clarifying who is the service population, reducing the complexity of eligibility criteria, and ensuring compliance with federal law.

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

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 conducted. The Notice of Negotiated Rulemaking was published in the April 2, 2008 Idaho Administrative Bulletin, Volume 08-4, page 20.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Scott Burlingame at (208) 332-7385.

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 August 27, 2008.

DATED this 19th day of June, 2008.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0613-0801

010. DEFINITIONS AND ABBREVIATIONS.

01. Adult Relatives. Any non-parent individual over the age of eighteen (18) years, who is related to the eligible child in any of the following ways: ()

a. ~~Brother~~ Brother, sister, aunt, uncle, nephew, niece, first cousin or first cousin once removed, or one (1) of these relationships prefixed by "grand" or "great," or: ()

b. ~~One (1) of these the following~~ One (1) of the following relationships by half-blood; a step-parent, step-sibling, or the spouse of a relative by marriage, even if the marriage has ended. (3-20-04)()

02. Authorization Assessment. A standardized assessment conducted by the Department within the first thirty (30) days following the date of application for emergency assistance. (3-20-04)

03. Child. ~~An person from birth to his eighteenth birthday~~ An individual less than eighteen (18) years of age. (3-20-04)()

04. Child Protection Services. Authorities to whom an individual reports the potential, alleged or actual abuse, abandonment or neglect of a child, in accordance with the provisions of Title 16, Chapter 16, Idaho Code, known as the "Child Protective Act." (3-20-04)

05. Department. The Idaho Department of Health and Welfare, or its designee. (3-20-04)

06. Designated Staff. Department staff who provide direct services to families and children. (3-20-04)

07. Destitution. A state of being in extreme need from lacking possessions or resources. ()

078. Emergency Assistance. Funding through Title IV-A for social services, emergency payments, and placement payments authorized by the Department and designed to meet short-term, non-recurrent emergency needs of families with children. (3-20-04)

089. Federal Poverty Guideline. Poverty guidelines issued each year in the Federal Register by the Department of Health and Human Services used to determine financial eligibility for certain state and federal programs. These guidelines may be accessed at the Internet website "http://aspe.os.dhhs.gov/poverty/." (3-20-04)

109. Needy Family. Two hundred percent (200%) of poverty as defined in the Federal Poverty Guidelines, or insufficient resources immediately available to meet the child's basic needs and which threatens the child's safety, stability, or well-being. (3-20-04)

101. Respite Care. Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual caregiver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. (3-20-04)

112. Service Period. ~~Is~~ The thirty (30) day authorization assessment period and up to ninety (90) days following the assessment period. (3-20-04)()

123. Youth. ~~An person~~ An individual between eighteen (18) ~~years of age~~ and ~~his~~ his ~~twenty-first birthday~~ one (21) years of age. (3-20-04)()

011. -- 099. (RESERVED).

100. EMERGENCY CONDITION.

01. Reporting or Referral of an Emergency Condition. A family is assessed for an emergency condition when the Department receives a report, referral or service request indicating an emergency condition exists

as described in Subsection 100.02 of these rules. (3-20-04)

02. Emergency Condition. A family has an emergency condition when any of the following exists: (3-20-04)

a. A child is in immediate danger of a life-threatening or emergency situation. See IDAPA 16.06.01, "Rules Governing Family and Children's Services," Subsection 554.01. (3-20-04)

b. A child is suspected of being abused, including physical or sexual, or serious physical or medical neglect has been reported. See IDAPA 16.06.01, "Rules Governing Family and Children's Services," Subsection 554.01. (3-20-04)

c. A child ~~is in a vulnerable situation because of the lack of parental care or insufficient resources immediately available to meet his basic needs and the~~ or youth has unmet short-term basic needs ~~may be a threat to~~ affecting the child's health, safety, ~~stability~~, or well-being ~~that place the child at risk of destitution as defined in Section 010 of these rules.~~ (3-20-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

300. EMERGENCY ASSISTANCE PAYMENTS.

Emergency assistance payments are ~~non-recurrent~~, short-term benefits for specific emergency conditions that are provided to assist a family with an eligible child or youth. These payments are not intended to meet ongoing and recurrent needs that will extend beyond the one hundred twenty (120) -day service period. (3-20-04)(____)

01. Emergency Payments. Emergency payments will be made to purchase goods and services relating to the emergency condition. (3-20-04)

~~**02. Placement Payments.** Placement payments may be made for shelter care, foster care, residential or group care for a child and may include food, clothing and supervision unless the child has assistance provided under Title IV-E funding.~~ (3-20-04)

~~**03. Non-Allowable Payments.** Emergency assistance funds may not be used to pay for the following:~~ (3-20-04)

a. Medical services reimbursable by Medicaid regardless of whether the individual is receiving or eligible for Medicaid. (3-20-04)

b. Services provided to meet a family's on going basic needs including housing, food, clothing, transportation and household goods that extend beyond the one hundred twenty (120) days. (3-20-04)

c. Services available through other community resources. (3-20-04)

d. Child care that is not considered respite care. (3-20-04)

e. Medical or automobile insurance. (3-20-04)

f. Down payment or purchases of vehicles or real property. (3-20-04)

04. Funding Restrictions. The Department may take action to reduce emergency assistance payments when available funding is insufficient. (3-20-04)