

Dear Senators LODGE, Broadsword & Werk, and
Representatives BLOCK, Nielsen & Henbest:

The Office of the Legislative Services, Research and Legislation, has received the enclosed rules of the Dept. Of Health & Welfare: IDAPA 16.07.17 - Alcohol and Substance Use Disorders Services (Docket No. 16-0717-0801) (Temporary and Proposed New Chapter and IDAPA 16.07.33 - Adult Mental Health Services (Docket No. 16-0733-0801)(Temporary and Proposed New Chapter).

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 12-26-07. 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 1-23-08.

_____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: December 5, 2007

SUBJECT: Department of Health and Welfare - IDAPA 16.07.17 - Alcohol and Substance Use Disorders Services (Docket No. 16-0717-0801) (Temporary and Proposed New Chapter and IDAPA 16.07.33 - Adult Mental Health Services (Docket No. 16-0733-0801)(Temporary and Proposed New Chapter)

By these Proposed and Temporary Rule dockets, the Department of Health and Welfare creates new chapter IDAPA 16.07.17 - Alcohol and Substance Use Disorders Services (Docket No. 16-0717-0801) and creates new chapter IDAPA 16.07.33 - Adult Mental Health Services (Docket No. 16-0733.0801) (hereinafter individually and collectively "proposed rule"). The Governor's justification for both temporary rule dockets is to confer a benefit. The temporary rule in both dockets becomes effective on January 1, 2008.

These two rule dockets will be presented to the 2008 Legislative Session for review as temporary rules, during which the Legislature will have the opportunity to continue or reject them as temporary rules. Since these dockets have not completed the proposed rule process, they will not be presented to the Legislature as pending rule dockets until the 2009 Legislative Session.

Both proposed rules are in response to Executive Order 2006-18, issued by Governor Risch on June 6, 2006, which reorganized the Department of Health and Welfare and created the Division of Behavioral Health as one of nine Department divisions.

Docket No. 16-0717-0801. The Department states that the Division of Behavioral Health is responsible for administering alcohol and substance use disorders services for adults and adolescents and that new IDAPA chapter 16.07.17 is needed to provide for oversight of alcohol and substance use disorder services. The primary purpose of the proposed rule is to provide a formal appeal process in rule for adults or adolescents seeking services from the Department.

The Department states that the proposed rule also defines the scope of voluntary alcohol and substance use disorders services and describes the eligibility criteria, application requirements, individualized treatment plan and selection of providers.

The Department states that this proposed rule is authorized by sections 39-311 and 56-1003, Idaho Code. Section 39-311, Idaho Code, mandates the Board of Health and Welfare to promulgate rules deemed necessary to carry out the provisions of the Alcohol and Intoxication Treatment Act. Section 39-302, Idaho Code, requires the Department to establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons and drug addicts. Section 56-1003, Idaho Code, provides broad powers and duties to the Department of Health and Welfare's Director, including the supervision and administration of services dealing with the problems of alcoholism, including the care and rehabilitation of persons suffering from alcoholism. Section 56-1003(3)(f), Idaho Code.

Docket No. 16-0733-0801. The Department states that the Division of Behavioral Health is also responsible for administering mental health services for adults and that new IDAPA chapter 16.07.33 is needed to provide oversight of such services. According to the Department, the proposed rule provides a formal appeal process in rule when adults seeking mental health services are denied such services by the Department. The Department states that the proposed rule also defines the scope of voluntary adult mental health services and describes the eligibility criteria, application requirements, individualized treatment plan and selection of providers.

The Department states that this proposed rule is authorized by sections 39-3133 and 56-1003(3)(c), Idaho Code. Section 39-2122, Idaho Code, requires the Director to make such other rules as are necessary and proper to carry out the purposes and intent of the Regional Mental Health Services Act. Section 56-1003(3)(c), Idaho Code, provides the Director the power and duty to supervise and administer mental health programs which shall include services for the evaluation, screening, custody and treatment of the mentally ill and those persons suffering from one or more mental defects.

According to the Department, no fee or charge is imposed and there is no impact to the General Fund by either proposed rule. According to the Department, negotiated rulemaking was not conducted on either proposed rule because the rulemaking was developed primarily to establish the benefit of appeal rights for individuals receiving alcohol and substance abuse disorders services and for adults receiving mental health services. 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 Wednesday, January 16, 2008. All written comments must be delivered to the Department on or before Wednesday, January 23, 2008

ANALYSIS

A. Docket No. 16-0717-0801.

The proposed rule Legal Authority (000), Title (001.01), Written Interpretations (002), Administrative Appeals (003), Office – Office Hours – Mailing Address – Street Address – Telephone Number – Internet Web Site (005), Confidentiality of Records and Public Records Requests (006) and Criminal History and Background Check Requirements (009) sections are standard. The Scope (section 001.02) of the proposed rule is to define the scope of voluntary services administered under the Department’s Division of Behavioral Health and to describe the eligibility criteria, application requirements, individualized treatment plan requirements, selection of providers and appeal process. The Scope section contains the caveat that the proposed rule is not intended and does not establish an entitlement for or to receive adult or adolescent alcohol or substance use disorder services and is not intended to be applicable to individuals ordered by the court to receive alcohol or substance use disorder services.

Incorporated by Reference (section 004) are the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition - Revised (ASAM PPC-2R) and the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). Both are available at the Department for public view.

There are thirty-three defined terms under section 010 of the proposed rule, and with the exception of “Department,” none of which are defined in either chapter 3, title 39 or chapter 10, title 56, Idaho Code. None of the defined terms are defined elsewhere in Idaho Code in a manner that would cause confusion. However, there are fourteen defined terms that are also defined in Docket No. 16-0733-0801. Most of these jointly defined terms have identical definitions or are defined in a program specific fashion so as to not cause confusion. However, there are wording differences in the terms “federal poverty guidelines” and “functional impairment” that do not appear to be program specific and thus may lead to confusion. The Division should strive to maintain consistency in its defined terms that are common across its various programs.

Under the proposed rule, adult and adolescent alcohol and substance disorders services may be accessed by eligible applicants through an application and request for an intake eligibility screening. Section 100. If the applicant meets the priority population and ASAM PPC-2R screening criteria, the applicant may be eligible for the Department’s services. “Priority populations” is defined in the proposed rule as “populations who receive services ahead of other persons and are determined yearly by the Department based on Federal regulations and input from the Interagency Committee on Substance Abuse Prevention and Treatment.” (This Interagency Committee was created in 2006 and its composition, duties and responsibilities are provided for at section 39-303, Idaho Code.) If the screening criteria are not met, the applicant will be referred to other appropriate community services.

The application must be completed over the telephone or in person. The intake eligibility screening must be directly related to the applicant’s substance dependence or substance-related

disorder and level of functioning and include the application, notice of privacy practice, fee determination and authorization for disclosure. Section 101.01. If found eligible for Department services following the screening, the applicant will either be placed on a waiting list or have an appointment for a full clinical assessment with a network treatment provider. Section 101.02.

Under section 102, Eligibility Determination, of the proposed rule, the total number of adults and adolescents who are eligible for its alcohol or substance use disorders services will be established by the Department in consultation with the Interagency Committee. In consultation with the Interagency Committee, the Department may limit or prioritize its services, define eligibility criteria and establish the number of persons eligible, based on such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need or other (undefined) factors. Section 102.01.

To be eligible for the Department's services, the applicant must be an adult (eighteen years or older) or adolescent (between ages 14 and 18) with family income at or below 175% of the federal poverty guidelines issued annually by the Department of Health and Human Services, an Idaho resident, a member of the priority population, meet DSM-IV-TR criteria for substance dependence or substance-related disorder, and meet specifications in each of the ASAM PPC-2R dimensions required for the recommended level of care. Section 102.02.

To be admitted to the program, there must be clinical evidence that provides a reasonable expectation that the applicant will benefit from the services. Section 102.02 [sic]. Not eligible for the services are applicants with epilepsy, mental retardation, dementia, a developmental disability, physical disability, mental illness or who is aged, unless the applicant meets primary DSM-IV-TR diagnostic criteria for substance abuse, substance dependence or substance related disorder and the specification in each of the ASAM PPC-2R dimensions required for the recommended level of care. Section 102.03 [sic].

Upon ten days written notice, the Department may reduce, limit, suspend or terminate eligibility for its services. Section 103.

Written notice will be provided to the applicant of its eligibility determination within two business days of receiving a completed intake eligibility screening and risk assessment for outpatient services and within one business day for social detoxification and residential treatment services. The written notice includes the applicant's name and identifying information, a statement of the decision, a concise statement of the reasons for the decision and the process for pursuing an administrative appeal. Section 104.01. If accepted, the applicant may accept or reject the Department's services, unless imposed by law or court order. Section 104.02. If determined to be not eligible, the applicant may reapply after six months or, upon a showing of a substantial change in circumstances, at any time. The Department will also refer the individual to an agency or department which provides the appropriate services if the individual is in need of such services. Section 104.03.

An individualized treatment plan, based on a biopsychosocial assessment of the client's needs and addressing the alcohol or substance disorders health affects on the client's major life areas, will be prepared by the Department's contracted treatment provider within 14 days of the eligibility determination. Section 200. The overall responsibility for development and implementation of the plan is assigned to a qualified professional staff member within the Department contracted network treatment provider program. ("Network treatment provider" is defined as a treatment provider who has facility approved through the Department and is contracted with the Department's Management Service Contractor.) The proposed rule sets forth the required contents of the plan. Section 200.01.

The client is allowed to choose from among the providers approved to provide services, unless within the criminal justice system and specific providers have been identified. The services must be within the ASAM PPC-2R level of care and based on the needs identified in the treatment plan. Section 200.02. Available services include early intervention, outpatient services, intensive outpatient services, residential social detoxification, medical detoxification, clinically managed low-intensity residential treatment, clinically managed medium intensity residential treatment and clinically managed high-intensity residential treatment. Section 200.03. Each of listed services is defined under section 010 of the proposed rule. Departmental services do not include experimental or investigational procedures, technologies and related services, treatment or services for epilepsy, mental retardation, dementia, developmental disability, physical disability, aged or infirm or any other services which are primarily recreational or diversional in nature. Section 200.04.

Individuals are responsible for paying for the Department's services, in accordance with the individual's ability to pay based on a sliding scale. A Fee Determination Form must be completed in writing or by telephone prior to the delivery of the services. Section 300.

B. Docket No. 16-0733-0801.

The proposed rule Legal Authority (000), Title (001.01), Written Interpretations (002), Administrative Appeals (003), Office – Office Hours – Mailing Address – Street Address – Telephone Number – Internet Web Site (005), Confidentiality of Records and Public Records Requests (006) and Criminal History and Background Check Requirements (009) sections are standard.

The Scope subsection (001.02) provides that the chapter defines the scope of voluntary adult mental health services administered under the Division of Behavioral Health and describes the eligibility criteria, application requirements, individualized treatment plan requirements and appeals process. The rule contains the caveat that it is not intended to, and does not, establish an entitlement for or to receive adult mental health services, nor is it intended to be applicable to individuals ordered by the court to receive mental health services.

The Scope subsection further provides that the priority population is adult individuals,

voluntarily seeking mental health services, who are residents of Idaho and have a primary diagnosis of serious and persistent mental illness, but that, pursuant to waiver, adult mental health services may be available to those who do not have a primary diagnosis of serious and persistent mental health. “Priority population” is not a defined term in this proposed rule. These substantive provisions are also stated in the body of the proposed rule.

The American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) is incorporated by reference and is available for review at the Department. Section 004.

There are eighteen defined terms at section 010 of the proposed rule and, with the exception of “Department,” none of which are defined in either chapter 3 or chapter 31, title 39, Idaho Code. None of the defined terms are defined elsewhere in Idaho Code in a manner that would cause confusion. However, there are fourteen defined terms that are also defined in Docket No. 16-0717-0801. Most of these jointly defined terms have identical definitions or are defined in a program specific fashion so as to not cause confusion. However, there are wording differences in the terms “federal poverty guidelines” and “functional impairment” that do not appear to be program specific and thus may lead to confusion. The Division should strive to maintain consistency in its defined terms that are common across its various programs.

Adult mental health services may be accessed by eligible applicants through an application and request for initial intake eligibility assessment. Section 100. Completing the Application for Mental Health Services is required. Section 101.01

Meeting the eligibility criteria does not guarantee that the applicant obtains the Department’s mental health services. Section 102.01 of the proposed rule provides that the total number of adults who are eligible for its services will be established by the Department and that the Department, in its sole discretion, may limit or prioritize its services, define eligibility criteria or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of criminal need or other [unstated] factors. If an applicant does not meet the eligibility requirements, the applicant may be referred to other appropriate services. Section 101.01.

A qualified clinician is required to complete an intake eligibility assessment that is directly related to the applicant’s mental illness and level of functioning on the Department approved and specified forms. The intake eligibility assessment and supplemental psychiatric, psychological or other specialty evaluations and test must be dated, signed and retained in the applicant’s medical record. Section 101.02.

To be eligible for voluntary mental health services, an applicant must be an adult, Idaho resident and have either a primary diagnosis of SPMI or be determined eligible under the waiver provisions in section 400 of the proposed rule. Section 102.02. An applicant who has epilepsy, mental retardation, dementia, a developmental disability, physical disability or who is aged or

impaired by chronic alcoholism or drug abuse is not eligible, unless he has a primary diagnosis of SPMI or is determined eligible under the proposed rule's waiver provisions. Section 102.03.

The Department makes a determination of whether the applicant needs emergency services at the first visit and prior to making a final determination of eligibility. Section 104.01. "Emergency" is a defined term under the proposed rule. Section 010.09. If the Department determines that emergency services are clinically necessary, it will identify the emergency services that are consistent with the applicant's needs, arrange for provision of such services and document the services provided in the applicant's record. Section 104.02. Upon the Department's determination, immediate intervention, emergency or crisis services will be arranged immediately. Section 104.03.

The Department will provide written notice of eligibility to the applicant containing specified information within ten days of receiving a completed intake eligibility assessment. Section 105.01. An eligible applicant has the right to accept or reject the Department's services unless the services are imposed by law or court order. Section 105.02. If deemed ineligible, the applicant may reapply after six months or immediately upon a showing of a substantial material change in circumstances. Section 105.03.

The Department will prepare an individualized treatment plan within thirty days of the Department's eligibility determination for every client that addressed the mental health effects on the major life areas and is based on an assessment of the client's mental health needs. Section 200. The overall responsibility for development and implementation of the plan is assigned to a qualified professional staff member. The plan must include specified provisions. Section 200.01. Within five days after completing the plan, the clinical team will identify and select service providers most appropriate to the client's needs. The case manager is given the responsibility of contacting the identified providers to determine their ability to serve the client. Section 200.02.

Individuals receiving Department services are responsible for paying for the services according to the individual's ability to pay under an established sliding fee schedule. A Fee Determination Form must be completed prior to the delivery of services. Section 300.

The Department retains the discretion to waive the eligibility requirement that the applicant have a primary diagnosis of SPMI, based on funding, provider availability and the number of clients receiving its services. Section 400.01. Any such waiver does not establish a precedent. Section 400.02. Waiver actions and determinations are not subject to appeal and are not admissible in administrative hearing or proceedings under the Department's rules. Section 400.03.

SUMMARY

Contrary to the Department's representation, the primary purpose of the rulemaking in both dockets is not to provide a formal appeals process. Instead, the primary focus is on eligibility for these services. The Department's Docket No. 16-0717-0801 appears to be authorized under

sections 39-311 and 56-1003(3)(f), Idaho Code and the Department's Docket No 16-0733-0801 appears to be authorized under sections 39-3133 and 56-1003(3)(c), Idaho Code.

cc: Sherri Kovach, Bethany Gadzinski, Scott Tiffany, Department of Health and Welfare

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.17 - ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES - NEW CHAPTER

DOCKET NO. 16-0717-0801

NOTICE OF RULEMAKING - TEMPORARY & PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2008.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-311 and 56-1003, 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, January 16, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with Executive Order 2006-18, the Department created a new Division of Behavioral Health. This new division is responsible for administering alcohol and substance use disorders services for adults and adolescents. Currently, there is no chapter pertaining to the oversight of alcohol and substance use disorders services and this new chapter is needed to fill that void.

This rulemaking is primarily being done because there is no formal appeal process in rule for adults or adolescents seeking services from the Department. This rulemaking provides this appeal process benefit and outlines how to appeal a denial of services decision made by the Department. This chapter also defines the scope of voluntary alcohol and substance use disorders services and describes the eligibility criteria, application requirements, individualized treatment plan, and selection of providers under these rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as this rulemaking confers a benefit.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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.

This rulemaking has no anticipated fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this new chapter was developed primarily to establish the benefit of appeal rights for individuals receiving alcohol and substance use disorders services under these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bethany Gadzinski, Division of Behavioral Health, at (208) 334-5756.

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, January 23, 2008.

DATED this _____ day of _____, 2007.

Sherri Kovach
Program Supervisor
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450 West State Street - 10th Floor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0717-0801

IDAPA 16
TITLE 07
CHAPTER 17

16.07.17 - ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Board of Health and Welfare, the responsibility to ensure that clinically necessary alcohol and substance use disorder services are available throughout the state of Idaho to individuals who meet certain eligibility criteria under the Alcoholism and Intoxication Treatment Act, Title 39, Chapter 3, Idaho Code. Under Section 39-311, Idaho Code, the Board of Health and Welfare is authorized to promulgate rules to carry out the purpose and intent of the Alcoholism and Intoxication Treatment Act. Under Section 39-304, Idaho Code, the Department is authorized to establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons, and drug addicts to carry out the purposes and intent of the Alcoholism and Intoxication Treatment Act. Section 56-1003, Idaho Code authorizes the Director of the Department to administer services dealing with the problem of alcoholism and the rehabilitation of persons suffering from alcoholism.

(1-1-08)T

001. TITLE AND SCOPE.

01. Title. The title of these rules is, IDAPA 16.07.17, “Alcohol and Substance Use Disorders Services.”

(1-1-08)T

02. Scope. This chapter defines the scope of voluntary services administered under the Department’s Division of Behavioral Health, and describes the eligibility criteria, application requirements, individualized treatment plan requirements, selection of providers, and appeal process under these rules. This chapter is not intended to and does not establish an entitlement for or to receive adult or adolescent alcohol or substance use disorder services, nor is it intended to be applicable to individuals ordered by the court to receive alcohol or substance use disorder services.

(1-1-08)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules.

(1-1-08)T

003. ADMINISTRATIVE APPEALS.

01. Appeal of Denial Based on Eligibility Criteria. Administrative appeals from a denial of alcohol and substance use disorder services based on eligibility criteria and priority population are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (1-1-08)T

02. Appeal of Decision Based on Clinical Judgement. All decisions involving clinical judgment, including the category of services, the particular provider of services, or the duration of services, are reserved to Department, and are not subject to appeal, administratively or otherwise, in accordance with *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (Idaho 1999). (1-1-08)T

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: (1-1-08)T

01. ASAM PPC-2R. American Society of Addiction Medicine (ASAM) Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition - Revised (ASAM PPC-2R). A copy of this manual is available by mail at the American Society of Addiction Medicine, 4601 North Park Ave., Suite 101, Chevy Chase, MD 20815; or by telephone and fax, (301) 656-3920 and (301) 656-3815 (fax); or on the internet at <http://www.asam.org>. (1-1-08)T

02. DSM-IV-TR. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (1-1-08)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEB SITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (1-1-08)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (1-1-08)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (1-1-08)T

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (1-1-08)T

05. Internet Web Site. The Department's internet web site is found at: <http://www.healthandwelfare.idaho.gov>. (1-1-08)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (1-1-08)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (1-1-08)T

007. -- 008. (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History and Background Check. All current Department employees, applicants, transfers, reinstated former employees, student interns, contract employees, volunteers, and others assigned to programs that involve direct contact with children or vulnerable adults as described in Section 39-5302, Idaho Code, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." (1-1-08)T

02. Availability to Work or Provide Service. Certain individuals are allowed to provide services 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." The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. (1-1-08)T

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (1-1-08)T

01. Adolescent. An individual between the ages of fourteen (14) and eighteen (18). (1-1-08)T

02. Adult. An individual eighteen (18) years or older. (1-1-08)T

03. Applicant. An adult or adolescent individual who is seeking alcohol or substance use disorders services through the Department who has completed or had completed on his behalf an application for alcohol or substance use disorder services. (1-1-08)T

04. ASAM PPC-2R. Refers to the second edition, revised, manual of the patient placement criteria for the treatment of substance-related disorders, published by the American Society of Addiction Medicine. (1-1-08)T

05. Biopsychosocial Assessment. Those procedures by which a substance use disorder clinician evaluates an individual's strengths, weaknesses, problems, needs, and determines priorities so that a treatment plan can be developed. (1-1-08)T

06. Client. A person receiving treatment for an alcohol or substance use disorder. The term "client" is synonymous with the terms: patient, resident, consumer, or recipient of treatment. (1-1-08)T

07. Clinical Judgment. Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes and alcohol and substance use disorders service needs. (1-1-08)T

08. Clinical Team. A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians and any other individual deemed appropriate and necessary to ensure that the assessment and subsequent treatment is comprehensive and meets the needs of the proposed client. (1-1-08)T

09. Clinically Managed High-Intensity Residential Treatment. Frequently referred to as long term residential care or a Therapeutic Community, twenty-four (24) hour intensive residential program designed to treat persons who have significant social and psychological problems. Individuals who are appropriate for this level of care typically have multiple deficits, which may include criminal activity, psychological problems, impaired functioning and disaffiliation from mainstream values. (1-1-08)T

10. Clinically Managed Low-Intensity Residential Treatment. Is a program that offers at least five (5) hours per week of outpatient or intensive outpatient treatment services along with a structured recovery environment, staffed twenty-four (24) hours per day, which provides sufficient stability to prevent or minimize relapse or continued use. This level of care is also known as a Halfway House. (1-1-08)T

11. Clinically Managed Medium-Intensity Residential Treatment. Frequently referred to as residential care, programs provide a structured, twenty-four (24) hour intensive residential program for clients who

require treatment services in a highly structured setting. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence. Community reintegration of residents in this level of care requires case management activities directed toward networking clients into community-based recovery support services such as housing, vocational services or transportation assistance so that the client is able to attend mutual/self-help meetings or vocational activities after discharge. (1-1-08)T

12. Clinical Necessity. Alcohol or substance use disorder services are deemed clinically necessary when the Department, in the exercise of clinical judgment, would recommend services to an applicant for the purpose of evaluating, diagnosing, or treating alcohol or substance use disorders that are: (1-1-08)T

a. Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for treating the applicant's alcohol or substance use disorder; and (1-1-08)T

b. Not primarily for the convenience of the applicant or service provider and not more costly than an alternative service or sequence of services and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's alcohol or substance use disorder. (1-1-08)T

13. Contracted Intermediary. A third party contractor of the Department who handles direct contracting with network providers for treatment services to include network management, claims payment, data gathering per Federal and State requirements and census management. (1-1-08)T

14. Department. The Department of Health and Welfare or a person authorized to act on behalf of the Department. (1-1-08)T

15. Early Intervention Services. Early intervention services are designed to explore and address an adolescent's problems or risk factors that appear to be related to substance use, i.e., alcohol, tobacco, or other drugs, and to assist the adolescent in recognizing the harmful consequences of substance use. Early intervention services are intended to be a combination of prevention and treatment services for at-risk youth. (1-1-08)T

16. Emergency. An emergency exists if an adult or adolescent individual is gravely disabled due to mental illness or substance abuse or dependence or there is a substantial risk that physical harm will be inflicted by the proposed client: (1-1-08)T

a. Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or (1-1-08)T

b. Upon another person as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm. (1-1-08)T

17. Federal Poverty Guidelines. Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income amount for family units considering the number of persons in the family unit. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. (1-1-08)T

18. Functional Impairment. Difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, or functioning in social, family, vocational or educational contexts. (1-1-08)T

19. Gravely Disabled. An adult or adolescent who, as a result of mental illness or substance abuse or dependence, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, or essential medical care, or shelter or safety. (1-1-08)T

20. Individualized Treatment Plan. A written action plan based on an intake eligibility screening and full clinical assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (1-1-08)T

21. Intake Eligibility Screening. The collection of data, analysis, and review, which the Department,

or its designee, uses to screen and determine whether an applicant is eligible for adult or adolescent alcohol or substance use disorder services available through the Department. (1-1-08)T

22. Intensive Outpatient Services. An organized service delivered by addiction professionals or addiction-credentialed clinicians, which provides a planned regimen of treatment consisting of regularly scheduled sessions within a structured program, for a minimum of nine (9) hours of treatment per week for adults and six (6) hours of treatment per week for adolescents. (1-1-08)T

23. Medical Detoxification. Means medically supervised twenty-four (24) hour care for patients who require hospitalization for treatment of acute alcohol intoxication or withdrawal, from one (1) or more other substances of abuse, and other medical conditions which together warrant treatment in this type of setting. Length of stay varies depending on the severity of the disease and withdrawal symptoms. (1-1-08)T

24. Network Treatment Provider. A treatment provider who has facility approval through the Department and is contracted with the Department's Management Service Contractor. A list of network providers can be found at the Department's website given in Section 005 of these rules. The list is also available by calling these telephone numbers: 1 (800) 922-3406; or dialing 211. (1-1-08)T

25. Outpatient Services. An organized non-residential service, delivered in a variety of settings, in which addiction treatment personnel provide professionally directed evaluation and treatment for alcohol and substance use disorders. (1-1-08)T

26. Priority Population. Priority populations are populations who receive services ahead of other persons and are determined yearly by the Department based on Federal regulations and input from the Interagency Committee on Substance Abuse Prevention and Treatment. A current list of the priority population is available from the Department. (1-1-08)T

27. Recovery Support Services. These services include: safe and sober housing that is staffed; transportation; child care; family education; life skills education; marriage education; drug testing; peer to peer mentoring; and clinical case management. (1-1-08)T

28. Residential Social Detoxification. Means a medically supported twenty-four (24) hour, social rehabilitation residential program which provides physical care, education, and counseling as appropriate for the client's health and safety during his process of physical withdrawal from acute alcohol intoxication or withdrawal, or from one or more other substances of abuse. Social detoxification provides access into care and treatment of alcohol or substance use disorders through monitored withdrawal, evaluation of present or potential alcohol or substance dependency and other physical ailments, and intervention into the progression of the disease through timely utilization of resources. Length of stay in a social detoxification program varies from three (3) to seven (7) days depending on the severity of the disease and withdrawal symptoms. (1-1-08)T

29. Sliding Fee Scale. A scale used to determine an individual's cost for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (1-1-08)T

30. Substance Dependence. Substance dependence is marked by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues to use alcohol or other drugs despite significant related problems. The cluster of symptoms can include: tolerance; withdrawal or use of a substance in larger amounts or over a longer period of time than intended; persistent desire or unsuccessful efforts to cut down or control substance use; a great deal of time spent in activities related to obtaining or using substances or to recover from their effects; relinquishing important social, occupational or recreational activities because of substance use; and continuing alcohol or drug use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been cause or exacerbated by such use as defined in the DSM-IV-TR. (1-1-08)T

31. Substance-Related Disorders. Substance-related disorders include disorders related to the taking of alcohol or another drug or abuse, to the side effects of a medication and to toxin exposures. They are divided into two (2) groups: the Substance Use Disorders and the Substance-Induced Disorders as defined in the DSM-IV-TR. (1-1-08)T

32. Substance Use Disorder. Includes Substance Dependence and Substance Abuse, according to the DSM-IV-TR. Substance Use Disorders are one (1) of two (2) subgroups of the broader diagnostic category of Substance-Related Disorders. (1-1-08)T

33. Substantial Material Change in Circumstances. A substantial and material change in circumstances which renders the Department's decision denying alcohol and substance use disorders services arbitrary and capricious. (1-1-08)T

011. -- 099. (RESERVED).

100. ACCESSING ALCOHOL AND SUBSTANCE DISORDERS SERVICES.

Adult and adolescent alcohol and substance disorders services may be accessed by eligible applicants through an application and request for an intake eligibility screening. (1-1-08)T

101. INTAKE ELIGIBILITY SCREENING AND FULL CLINICAL ASSESSMENT.

01. Intake Eligibility Screening. A screening for eligibility for alcohol and substance use disorders services through the Department is based on meeting priority population and ASAM PPC-2R as incorporated by reference in Section 004 of these rules. If an applicant meets this criteria he may be eligible for alcohol and substance use disorders services through the Department. Applicants not meeting this criteria will be referred to other appropriate community services. All applicants are required to complete an Application for Alcohol and Substance Use Disorders Services either over the telephone or in person at a network treatment provider site. If an applicant refuses to complete the application, the Department reserves the right to discontinue the screening process for eligibility. The intake eligibility screening must be directly related to the applicant's substance dependence or substance-related disorder and level of functioning, and will include: (1-1-08)T

- a. Application for Alcohol or Substance Use Disorders Services, pending document approval; (1-1-08)T
- b. Notice of Privacy Practice; (1-1-08)T
- c. Fee Determination; and (1-1-08)T
- d. Authorization for Disclosure. (1-1-08)T

02. Full Clinical Assessment. If the applicant is found eligible for alcohol and substance use disorders services after completion of the intake eligibility screening, the applicant will either be placed on a waiting list to receive a full clinical assessment or will have an appointment made to receive a full clinical assessment with a Department's network treatment provider. (1-1-08)T

102. ELIGIBILITY DETERMINATION.

01. Determination of Eligibility for Alcohol and Substance Use Disorders Services. The total number of adults and adolescents who are eligible for alcohol or substance use disorders services through the Department will be established by the Department, in consultation with the Idaho Interagency Committee on Substance Abuse Prevention and Treatment. The Department may, in consultation with the Idaho Interagency Committee on Substance Abuse Prevention and Treatment, limit or prioritize adult and adolescent alcohol or substance use disorder services, define eligibility criteria, and establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (1-1-08)T

02. Eligibility Requirements. To be eligible for alcohol and substance use disorders services through a voluntary application to the Department, the applicant must: (1-1-08)T

- a. Be an adult or adolescent with family income at or below one hundred seventy-five per cent (175%) of federal poverty guidelines; (1-1-08)T

- b. Be a resident of the state of Idaho; (1-1-08)T
- c. Be a member of the priority population; (1-1-08)T
- d. Meet diagnostic criteria for substance dependence, or a substance-related disorder as described in the DSM-IV-TR; and (1-1-08)T
- e. Meet specifications in each of the ASAM PPC-2R dimensions required for the recommended level of care. (1-1-08)T

02. Admission to Treatment Program Requirements. In order to be admitted into an adult or adolescent alcohol or substance use disorders treatment program, there must be clinical evidence that provides a reasonable expectation that the applicant will benefit from the alcohol or substance use disorder services. (1-1-08)T

03. Ineligible Conditions. An applicant who has epilepsy, mental retardation, dementia, a developmental disability, physical disability, mental illness, or who is aged, is not eligible for alcohol and substance use disorders services, unless, in addition to such condition, they meet primary diagnostic criteria for substance abuse, substance dependence, or a substance related disorder as described in the DSM-IV-TR and the specification in each of the ASAM PPC-2R dimensions required for the recommended level of care. (1-1-08)T

103. NOTICE OF CHANGES IN ELIGIBILITY FOR ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES.

The Department may, upon ten (10) days' written notice, reduce, limit, suspend, or terminate eligibility for alcohol or substance use disorders services. (1-1-08)T

104. NOTICE OF DECISION ON ELIGIBILITY.

01. Notification of Eligibility Determination. Within two (2) business days of a receiving a completed intake eligibility screening and risk assessment for outpatient services, and one (1) business day for social detoxification and residential treatment services; the Department, or its contracted intermediary, will notify the applicant or the applicant's designated representative in writing of its eligibility determination. The written notice will include: (1-1-08)T

- a. The applicant's name and identifying information; (1-1-08)T
- b. A statement of the decision; (1-1-08)T
- c. A concise statement of the reasons for the decision; and (1-1-08)T
- d. The process for pursuing an administrative appeal regarding eligibility determinations. (1-1-08)T

02. Right to Accept or Reject Alcohol and Substance Use Disorders Services. If the Department, or its contracted intermediary, determines that an applicant is eligible for alcohol and substance use disorders services through the Department, an individual has the right to accept or reject alcohol and substance use disorders services offered by the Department, unless imposed by law or court order. (1-1-08)T

03. Reapplication for Alcohol and Substance Use Disorders Services. If the Department determines that an applicant is not eligible for alcohol and substance use disorders services through the Department, the applicant may reapply after six (6) months or at any time upon a showing of a substantial material change in circumstances. Also, if the individual screened is found not to meet admission criteria, but is in need of other types of services, the Department, or its contracted intermediary, will refer the individual to an agency or department which provides the appropriate services needed. (1-1-08)T

106. -- 199. (RESERVED).

200. INDIVIDUALIZED TREATMENT PLAN, SELECTION OF SERVICE PROVIDERS AND AVAILABLE TREATMENT SERVICES.

The Department's contracted treatment provider will prepare for every client an individualized treatment plan that addresses the alcohol or substance disorders health affects on the client's major life areas. The treatment plan will be based on a biopsychosocial assessment of the client's alcohol or substance use disorders treatment needs. (1-1-08)T

01. Individualized Treatment Plan. Overall responsibility for development and implementation of the plan will be assigned to a qualified professional staff member within a Department contracted network treatment provider program. A detailed individualized treatment plan will be developed within fourteen (14) days following the Department's determination that an applicant is eligible for alcohol and substance use disorders services through the Department. The individualized treatment plan will include the following: (1-1-08)T

- a.** The services clinically necessary to meet the client's alcohol and substance use disorders needs; (1-1-08)T
- b.** Referrals for needed adjunct services that the alcohol and substance use disorders treatment program does not provide; (1-1-08)T
- c.** Goals that the client must achieve; (1-1-08)T
- d.** Specific objectives that relate to the goals, written in measurable terms, with targeted expected achievement dates; (1-1-08)T
- e.** Frequency of services; (1-1-08)T
- f.** Specific criteria to be met for discharge from treatment; and (1-1-08)T
- g.** A specific plan for including the family or significant others. (1-1-08)T

02. Selection of Providers. The client can choose from among the array of substance use disorders treatment providers approved to provide services. The services must be within the recommended level of care according to ASAM PPC-2R and based on needs identified in the biopsychosocial assessment and resultant individualized treatment plan. The client does not have the option of choosing his treatment provider if he is within the criminal justice system and specific providers have been identified for the client. (1-1-08)T

03. Treatment Services Available. Available alcohol or substance use disorders treatment services, as defined in Section 010 of these rules, include: (1-1-08)T

- a.** Early intervention; (1-1-08)T
- b.** Outpatient services; (1-1-08)T
- c.** Intensive outpatient services; (1-1-08)T
- d.** Residential social detoxification; (1-1-08)T
- e.** Medical detoxification; (1-1-08)T
- f.** Clinically managed low-intensity residential treatment; (1-1-08)T
- g.** Clinically managed medium intensity residential treatment; and (1-1-08)T
- h.** Clinically managed high-intensity residential treatment. (1-1-08)T

04. Treatment Services Not Available. Alcohol or substance use disorder treatment services, do not include: (1-1-08)T

- a.** Experimental or investigational procedures; (1-1-08)T

- b.** Technologies and related services; (1-1-08)T
- c.** Electroconvulsive therapy; (1-1-08)T
- d.** Treatment or services for epilepsy, mental retardation, dementia, a developmental disability, physical disability, aged or the infirm; or (1-1-08)T
- e.** Any other services which are primarily recreational or diversional in nature. (1-1-08)T

201. -- 299. (RESERVED).

300. CHARGES FOR ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES.

Individuals receiving alcohol and substance use disorders services through the Department are responsible for paying for the services provided. Individuals must complete a "Fee Determination Form," in writing or by telephone, prior to the delivery of alcohol and substance use disorders services. The amount charged for each service will be in accordance with the individual's ability to pay as determined by the sliding fee scale entitled: "The Sliding Fee Schedule For Substance Use Disorders Services," in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," in Section 500. (1-1-08)T

301. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.33 - ADULT MENTAL HEALTH SERVICES - NEW CHAPTER

DOCKET NO. 16-0733-0801

NOTICE OF RULEMAKING - TEMPORARY & PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2008.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-3133, and 56-1003(3)(c), 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, January 16, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with Executive Order 2006-18, the Department created a new Division of Behavioral Health. This new division is responsible for administering mental health services for adults. Currently, there is no chapter pertaining to the oversight of adult mental health services and this new chapter is needed to fill that void.

Currently, there is no formal appeal process in rule for adults seeking mental health services from the Department. This rulemaking provides this appeal process and outlines how to appeal a denial of services decision made by the Department. This new chapter also defines the scope of voluntary adult mental health services and describes the eligibility criteria, application requirements, individualized treatment plan, and selection of providers under these rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as this rulemaking confers a benefit.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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.

This rulemaking has no anticipated fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this new chapter was developed primarily to establish the benefit of appeal rights for adults receiving mental health services under these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Scott Tiffany, Division of Behavioral Health, at (208) 332-7243.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to

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