

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Health and Welfare: **IDAPA 16.07.37 - Children's Mental Health Services (Docket No. 16-0737-0801) (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 11-18-08. 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 12-03-08.

_____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 29, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.07.37 - Children's Mental Health Services (Docket No. 16-0737-0801) (Proposed New Chapter).

By this proposed new chapter docket, the Department of Health and Welfare creates new chapter IDAPA 16.07.37 - Children's Mental Health Services (hereinafter "new chapter"). The new chapter has largely been split out of IDAPA 16.06.01, Rules Governing Family and Children's Services (hereinafter "source chapter") which is being renamed under Proposed Rule Docket No. 16-0601-0801, as Child and Family Services.

The Department states that the reason for the new chapter is to comply with Executive Order 2006-01 which resulted in the creation of the new Division of Behavioral Health. This new Division is responsible for administering mental health services for children. According to the Department, the new chapter defines the scope of services under the Children's Mental Health Program and describes the eligibility criteria, application requirements, services and appeal process under this program.

According to the Department, the proposed rule is authorized pursuant to sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004 and 56-1004A, Idaho Code.

Sections 16-2404, 16-2406, 16-2423 and 16-2433, Idaho Code, are parts of the Children's Mental Health Services Act, and address community services and supports, teens at risk, interagency collaboration, access to services, informed consent of medication or other treatment and the persons subject to involuntary or emergency treatment, and the authority of the Department's director to promulgate rules necessary to the implementation of that Act.

Section 56-202(b), Idaho Code, requires the Department's director to promulgate, adopt and enforce such rules and such method of administration as may be necessary or proper to carry

out the provisions of title 56, Idaho Code, which deals with public assistance and welfare. Sections 56-203B, Idaho Code, provides that payment of public assistance for the benefit of any dependent child creates a debt due or owing to the Department by the parent or responsible party and creates a subrogation interest in the Department. Section 56-204A, Idaho Code, requires the Department to adopt appropriate rules related to children services, including rules that provide for receiving from any source and investigating all reasonable reports or complaints of neglect, abuse, exploitation or cruel treatment of children.

Section 56-1003, Idaho Code, provides powers and duties to the Department's director in the area of public health; section 56-1004, Idaho Code, provides administrative powers and duties to the Department's director. Section 56-1004A, Idaho Code, adopted in 2005 and amended in 2006, deals specifically with criminal history and background checks. Subsection (1) authorizes the Department to conduct such checks of individuals who provide care or services to vulnerable adults or children and who are identified in rule as being required to have such a check. Subsection (2) describes the information that must or may be contained in such a check. Subsection (3) requires the Department to promulgate rules to further define those individuals who are required to have a background check.

According to the Department, no fee or charge is imposed by the new chapter and there is no fiscal impact on the General Fund in excess of \$10,000. According to the Department, negotiated rulemaking was conducted in April and May of this year with notice of negotiated rulemaking published in the April 2, 2008, Administrative Bulletin. 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, October 15, 2008. All written comments must be delivered to the Department on or before Wednesday, October 22, 2008

ANALYSIS

As the Department has noted, some provisions of the source chapter have been carried over to this proposed new chapter. This has been done either through deleting and transferring or copying source chapter rule sections, sometimes as amended by proposed Docket No. 16-0601-0801, to the new chapter. In addition, the new chapter contains a fair number of sections that are not contained in the source chapter. It is fair to say that the new chapter represents a substantive rewriting of the rules regarding children's mental health services.

Changes in the source chapter contained in proposed Docket No. 16-0601-0801 that have been transferred to this new chapter without change will not be specifically addressed in this memorandum, other than the fact that the transfer has occurred. Please see the memorandum addressing Docket No. 16-0601-0801 for the changes to the source chapter. This memorandum will also not dwell on the purely technical and housekeeping changes.

A. Standard Rule Sections.

The new chapter's sections on Legal Authority (000), Title (001.01), Appeals (003), Incorporation by Reference (one document - American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR)) (004), Office Hours – Mailing Address – Street Address – Telephone – Website (005), Confidentiality of Records and Public Records Requests (006) and Criminal History and Background Checks (009) [similar section 006 of IDAPA 16.07.33, Adult Mental Health Services] are standard.

Section 001.02 of the new chapter provides its scope as defining the appeal process, scope of services, eligibility criteria and application requirements for the provision of children's mental health services.

The section on "Written Interpretations," (002) states that "this agency may have written statements that pertain to the interpretations of the rules of this chapter, or to the documentation of compliance with the rules of this chapter." The Department cites section 67-5201(19)(b)(iv), Idaho Code, which provides that a "rule" does not include "any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule." Thus, any written interpretation of a rule promulgated by the Department is not a part of the rule itself. The Department states that such written interpretations are available for public inspection and copying at cost in the Department's main Boise office. The Department should also make such written interpretation readily accessible on its web page.

B. Definitions.

Definitions carried over from the source chapter, including those definitions modified by Docket No. 16-0601-0801, without substantive modification are: "areas(s) of concern," "case management," "children's mental health services," "day treatment services," "Director," "desired result," "extended family member of an Indian child," "independent living," "Indian," "Indian child," "Indian child's tribe," "parent," "P.L. 96-272," "P.L. 105-89," "respite care" and "Title IV-E."

A number of terms defined in the source chapter and transferred to the new chapter have modified definitions: "alternate care," "alternate care plan," "assessment," "case management," "children's mental health services," "Department," "family," "licensed," "Medicaid," "Title XIX (Medicaid)," "treatment plan" and "voluntary placement agreement."

- "Alternate care" are temporary living arrangements "which may include licensed foster care, residential treatment and other facilities licensed by the state to provide twenty-four (24) hour care for children" in accordance with cited Department rule. Section 010.01.
- "Alternate care plan" includes the statement that such a plan is "part of the treatment plan for children in alternate care." Section 010.02.
- "Assessment" has been redefined as "the gathering of historical and current clinical information through a clinical interview and from other available

resources to identify the child’s mental health issues, the child’s strengths, the family’s strengths, and the service needs.” Section 010.04.

- “Department” includes the recognition that it is “designated as the state mental health authority” under Idaho statute. Section 010.13.
- “Family” is more simply defined as two or more persons related by blood, marriage or adoption. Section 011.01.
- “Licensed” includes “hospitals licensed in accordance” with cited Department rule. Section 012.01.
- “Medicaid” is more completely defined as “Idaho’s Medical Assistance Program administered under Title XIX of the Social Security Act.” Section 012.02.
- “Title XIX (Medicaid)” is more completely defined as being “known as Medicaid” and as “a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources.” Section 013.07.
- “Treatment plan” is changed from “family (case) plan” in the source rule and is clarified to include that it is a “signed agreement between the Department and a parent or guardian” that is developed with “the child, when possible, and the child’s parent or guardian” and includes “the alternate care plan, if the child is in alternate care.” Section 13.08.
- “Voluntary placement agreement” is clarified to be a “standardized” and “signed” written agreement “that outlines specific responsibilities of each party and authorizes the Department to place a child in alternate care.” Section 013.09.

Terms defined in the new chapter and not defined in the source rule are: “case record,” “child,” “clinician,” “crisis intervention,” “crisis response,” “emergency,” “family support services,” “federal poverty guidelines,” “guardian,” inpatient services,” “outpatient services,” “reasonable efforts,” “residential treatment,” “sliding fee scale,” “teens at risk,” “teen early intervention specialist” and “wraparound.”

- “Case record” means “compilation of all electronic and hard copy documentation relating to a child who is receiving or has received children’s mental health services including legal documents, identifying information, and assessments.” Section 010.06.
- “Child” is simply an individual who is under 18 years. Section 010.07.
- “Clinician” means “any of the direct service personnel with a Master’s degree working in regional Children’s Mental Health programs, including master’s level social workers, psychologists, counselors, and family therapists.” Section 010.09.
- “Crisis intervention” is “a set of planned activities” for a child eligible for mental health services “designed to reduce the risk of life-threatening harm to self or another person.” Section 010.10.
- “Crisis response” is “a service for a child that involves immediate actions taken to assess risk or intervene in an emergency” Under this definition there is no

requirement for a determination that a child is eligible for mental health services under the new chapter. Section 010.10.

- “Emergency” is defined identically to the statutory definition found at section 16-2403(6), Idaho Code. Section 010.16.
- “Family support services” is “assistance provided to a family to assist” in caring for a child eligible for mental health services, with the purpose being “to strengthen adults in their role as parents through the provision of services including assistance with transportation, family counseling services, training, education, and emergency assistance funds” in accordance with cited Department rule. The new chapter provides that “family support services must be on the treatment plan.” Section 011.02.
- “Federal poverty guidelines” are simply the guidelines issued annually by the federal Department of Health and Human Services establishing the poverty income limits. The new chapter cites to the web site posting these guidelines. Section 011.03.
- “Guardian” is “an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child” as set forth by cited Idaho statute. Section 011.04. [Note: the new chapter duplicates the Idaho Code citation.]
- “Inpatient services” are “mental health and medical services provided to a child admitted to an psychiatric hospital.” Section 011.11.
- “Outpatient services” are “mental health services provided to a child who is not admitted to a psychiatric hospital or in a residential treatment setting.” Section 012.03.
- “Reasonable efforts” is “a court determination that the Department offered or provided services to a family intended to assist” a child eligible for mental health services “to remain in the family home, return to the family home, or to finalize a permanency plan.” Section 012.07.
- “Residential treatment” is “a treatment facility licensed as a children’s residential care facility that provides twenty-four (24) hour care in a highly-structured setting delivering substitute parental care and mental health services.” Section 012.08.
- “Sliding fee scale” is “a scale used to determine an individual’s cost for services based on the Federal Poverty Guidelines” as set forth in cited Department rule. Section 013.01.
- “Teens at risk” is defined similarly to the statutory definition set forth at section 16-2403(16), Idaho Code, with the substitution of “substance abuse disorder” for “substance abuse.” Section 013.02. [Note: changing the statutory definition in rule should be discouraged.]
- “Teen early intervention specialist” is “a person with a master’s degree in social work, psychology, marriage and family therapy, counseling, chemical dependency, addictive studies, psychiatric nursing, or very closely-related field of study contracted to work with teens at risk.” Section 013.03.

- “Treatment foster care” is “a service that provides clinical intervention” a child eligible for mental health services “within the private homes of trained, licensed foster families.” Section 03.04. [Note: “treatment foster care” is not in alphabetical order with “title IV-E” or “title XIX (Medicaid).”]
- “Wraparound” is “a planning process that brings together a team of professionals and citizens working together to support children” eligible for mental health services and their families, including “the child, family members, representatives of public and private agencies, civic groups and other community members. The services and supports focus on the strengths of the child and family, are provided in the local community, and are customized to fit the individual culture of the family.” Section 013.09.

The new chapter does not provide a definition for “serious emotional disturbance.” Instead, the new chapter refers to a child eligible for mental health services under the new chapter.

C. General Provisions for Children Receiving Mental Health Services and Their Families.

The new chapter restates the “reasonable efforts” general requirement, compared to the source rule. Under the new chapter, the emphasis is on documentation of the services offered or provided to a family to assist a child eligible for mental health services to remain in or return to the family home or to finalize a permanency plan. Section 100.01. As noted above, the new chapter defines “reasonable effort” as a court determination that the Department as done so. “Reasonable efforts” under the source rule focuses on the Department’s efforts to achieve these goals. Source rule Section 050.01.

Also restated in the new chapter is “least restrictive setting” placement requirements: meeting the child’s mental health needs and close proximity to the parent or guardian. If these requirements are not met, the new chapter provides that the Department provide written justification to the parent or guardian that the placement is in the child’s best interest. Section 100.02. The source rule focuses on the “least restrictive, most family-like setting possible” and excludes the guardian. Source rule section 050.04.

The new chapter requires that visitation arrangements for the child’s parent or guardian will be documented in the alternate care plan. Section 100.03. The new chapter clarifies that notice to the parent or guardian of a child’s change of placement must occur seven days “after” the change. Section 100.04.a. The new chapter also clarifies that in the case of an Indian child under the jurisdiction of the court, notice must be provided to the Secretary of Interior by certified mail to the Bureau of Indian Affairs, Division of Social Services, in addition to the child’s Indian custodian and the child’s tribe, and if the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the “proceeding” must be given to the Secretary of the Interior. Section 100.04.b. [Note: the new chapter does not discuss a “proceeding” that is to occur with a change of placement.]

Section 101, treatment plan development, is new and does not have a parallel in the source chapter. The new chapter provides that the treatment plan will be completed within 15 days of the determination that the child is eligible for services under the new chapter. The parent or guardian must be given the opportunity to participate. For voluntary placement, refusal of the parent or guardian to sign the plan may be grounds for closing the case. For court ordered placements, refusal to sign and the reason for refusal will be documented in the plan. Section 101.01. The treatment plan will be developed annually. The parent or guardian is given the opportunity to participate and sign the annual plan. Section 101.02. Treatment plans are to be reviewed with the family at least once every 120 days. Section 101.03. Treatment plans must include a long-term goal that identifies specific behavior changes, has measurable desired results, and has specific task that identify who, how and when the tasks will be completed. Section 101.04.

Section 105, case records, has been adapted from source rule 060, with little change.

D. Children's Mental Health Services.

The new chapter specifies the children's mental health services that are to be provided by or through the children's mental health field offices in each region: assessment, case management, crisis response, day treatment services, family support services, independent living, inpatient services, outpatient services, residential treatment, respite care, treatment foster care and wraparound. Section 400. Each of these services is a defined term under the new chapter. Except for assessment and independent living, the source chapter lists a distinct set of "core children's services": crisis services, service management, screening services, safety/service planning services, preventative services and court-ordered services. Source rule section 030.

The new chapter's "Teens at Risk program," section 401, has not been previously addressed in any Department rule. This Teens at Risk program is authorized by SB 1147 (2007) which permitted the Department, the State Department of Education, the Department of Juvenile Corrections, counties, courts and local school districts to collaborate and cooperate in planning and developing mental health counseling, substance abuse treatment and recovery support services and individual service plans for teens at risk. That legislation authorized the Department to contract with school districts to provide teen early intervention specialist.

The new chapter permits school districts to apply to the Department through a competitive application process using prescribed forms by July 1 of each year that funding is available. Section 401.01. A team composed of persons from the Department, Department of Education, local school districts and a parent are to evaluate the applications utilizing the criteria of demonstrated need, school district contribution, and rural status and to make recommendations to the Department. Section 401.02.a. Legislative appropriations will determine the number of school districts awarded a program. Section 401.02.b. School districts awarded a program are to enter into a written contract with the Department that sets forth the terms, services, data collecting, funding and other activities prior to the implementation of the program. Section

401.02.c.

Teen early intervention specialist hired or under contract with the school district are to serve the teens at risk in the school setting without charge to the parents. Teens at risk not enrolled in public schools may participate only with the permission of the local school principal or when ordered by a judge. Services include: group counseling, recovery support, suicide prevention and other mental health and substance use disorder counseling services as needed. Section 401.03. The Department, with the possible assistance of a college or university, will gather data and evaluate the effectiveness of the program, including: teen arrests, detention and commitments to state custody; teen suicide rates; impacts on juvenile mental health and drug courts; access to mental health services; and academic achievement and school disciplinary actions. Section 401.04.

Children's mental health services may be accessed through application signed by the parent or guardian or through a court order. Section 405. Once the application has been signed or the court order received, the Department schedules a mental health assessment which may be conducted by a Department clinician or, in the Department's discretion, by another mental health professional within 90 days prior to the application date or court order. Section 406.

Eligibility criteria for voluntary services include being under 18 years of age, residing in Idaho, having a DSM-IV-TR Axis I diagnosis (although a substance use disorder or developmental disorder, alone, does not constitute an eligible Axis I diagnosis) and having a specified substantial functional impairment. Section 407.01. A court, acting pursuant to authority conferred by either the Children's Mental Health Services Act, chapter 24, title 16, Idaho Code, or the Juvenile Corrections Act, chapter 5, title 20, Idaho Code, may order the Department to provide assessment, treatment and services. Under such circumstances, the Department is to include parents and [or] guardians in the process. Section 407.02. Absent an application or court order, a child is not eligible for these services, other than through crisis response. A child with a substance use disorder or a developmental disorder, alone, may be eligible for Department services under separate rule. Section 407.03.

For voluntary services, eligibility determination will be made within 30 days of receipt of a signed application, with written notification to the child's parent or guardian, containing specified information, within five working days thereafter. Section 410.01. In the case of voluntary services, the Department's clinician must inform the child's parent or guardian of the right to reject services and inform the parent of possible charges for services pursuant to Department rule. Sections 410.02 and 03. If the Department determines that a child is not eligible for services, the parent or guardian may reapply after six months or at any time upon a showing of a substantial, material change in circumstances. Section 410.04.

The treatment plan is developed, pursuant to rule, by the Department, a parent or guardian, the child (if appropriate) and perhaps the service provider, and will be specific,

measurable and realistic in the identification of the goals, relevant areas of concern and desired results. Section 415

Rather than specifying the behavioral indicators suggestive of a positive outcome as done in the source rule, the new chapter states that mental health services outcomes are measured through the administration of a satisfaction survey and standardized functional assessment tool, such as the Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Child Functional Assessment Scale (PECFAS). Section 416.

New chapter section 417, use of public funds and benefits, is transferred with only a minor wording change (“alternate care placement” substituted from “other residential placement”) from source rule section 642.04. Regarding charges to parents, the new chapter reflects the Department’s understanding that guardians are not responsible for the payment of services. Also, the new chapter states that parents are responsible for court ordered services provided to their child and to the family, although they are not responsible for services provided through a Teens at Risk program. Charges are assessed pursuant to the parents’ ability to pay as provided in specified Department rule. Section 418. Section 419, the sliding fee schedule for children’s mental health outpatient services, cites to the same Department rule referenced in section 418 and thus may be deemed repetitious. The actual sliding fee table is not carried over from the source rule. Source rule section 644. Regarding fee determination for children’s mental health outpatient services, the new chapter, at section 420, cites to another Department rule, rather than detailing the fee determination process, as in source rule section 645.

E. Alternate Care.

As in the source rule, section 030.07, alternate care in the new chapter may be initiated either by court order or by voluntary placement, section 500.01 and 02. The new chapter, however, is much more detailed as to the requirements for a voluntary placement, including: a parent or guardian is no longer able to maintain the eligible child in the home; the Department determines that the child would benefit from alternate care and treatment services; and a treatment plan, alternate care plan and voluntary placement agreement has been developed by the Department and the parent or guardian prior to placement. The voluntary placement agreement may be revoked by the parent or guardian at any time. Voluntary alternate care placements exceeding 180 days cannot be reimbursed by Title IV-E funds without a judicial determination (which may be requested by the Department) that such placement is in the best interest of the child. Section 500.02.

The Department must arrange alternate care in accordance with federal law protections. Section 501.01 [Note: the Department’s citation to P.L. 96-272, the Adoption Assistance And Child Welfare Act of 1980, as amended by P.L. 105-89, the Adoption and Safe Families Act of 1997, is less than useful since the provisions of the Public Laws are extremely difficult to find and track. A better practice would be citation to the United States Code, which represents the current law and is readily accessible. The Department properly cites to the Idaho Code with

regard to the Children’s Mental Health Services Act and the Child Protective Act, but fails to provide a code citation for the Indian Child Welfare Act.] Alternate care placement must be in a licensed foster home, residential care facility or hospital, licensed pursuant to Department rule, provided that an Indian child may be placed in a foster care home licensed, approved or specified the child’s tribe or an institution for children approved by an Indian tribe or operated by an Indian organization. Sections 501.02 and 505. Under the new chapter, out-of-state alternate care placement requires compliance with the Interstate Compact on the Placement of Children as set forth in Idaho Code. Section 501.03. The new chapter does not contain provisions contained in the source rule regarding the circumstance to be considered for an out-of-state placement. Source rule section 030.09.

The date the child entered alternate care provides the base for benefits, eligibility determinations and required reviews. Section 503. If specified eligibility requirements set forth in cited Department rule are met, a child placed in alternate care is eligible for Title IV-E and

Title XIX funding. Applications for these programs are to be made by the Department’s clinician. Section 504.

The new chapter clarifies provisions adapted from the source rule on alternate care management. “Clinician,” is substituted for “family services worker” and “child’s parent or guardian” replaces “the family.” The child’s parent or guardian (and the Department) must inform the alternate care provider of that provider’s roles and responsibilities in meeting the needs of the child and provide specified information, including: the child’s doctor, dentist and other health providers; and the names and addresses of the child’s current or last school attended, including homeschool or alternate school, if appropriate. Section 506.02. The clinician is “responsible for explaining” the financial and payment arrangements to the alternate care provider and must complete the required documentation, section 506.04, rather than being required to “assure” that the alternate care provider understands these arrangements and that the forms are completed and submitted, source rule section 405.04.

The new chapter permits the child, if of appropriate developmental age, to be involved in the establishment of the visitation schedule. Section 506.05. The new chapter provides that the at least monthly face-to-face contact with the alternate care placed child include both the parent or guardian and the clinician. Section 506.05.b. For out-of-state placements, the new chapter requires that the alternate care provider participate in the monthly contacts. Section 506.05.d. The new chapter does not carry forward the source rule provision requiring the Department to have strategies in place to detect abuse of children in alternate care. Source rule section 405.05.b.

The new chapter does not distinguish between “discharge” and “transition” planning, addressing only transition planning. Sections 506.05 and 06. The new chapter’s alternate care planning provisions reflect those provisions in the source rule with minor change. The new chapter provides that one of the purposes of the alternate care plan is to facilitate the provision of

mental health treatment services. Section 522.01.a. “Treatment plan” is substituted for “family service plan.” Section 522.01.b.

The new chapter’s parental financial support for children in alternate care provisions are based on the source chapter. The new chapter includes section 16-2406, Idaho Code, access to services for children with serious emotional disturbance and their families, as part of its authority. Section 536. The new rule provides that the Department will refer parents to the Bureau of Child Support Service for support payment calculation and payment arrangements. Section 536.02.b. In the case of a voluntary placement, the support agreement must specify when the support is to be paid. Section 537.01. Under the new chapter, the Department has the discretion to request a court held support hearing to establish a support order for payment of involuntary placement costs. Section 537.02.

The insurance coverage section 540 of the new chapter tracks source rule section 440. Under the new chapter, the Department will issue a medical care card to cover medical expenses for each child placed in alternate care. Section 541. Rather than being required to notify the child’s doctor in the case of medical emergencies, as provided in the source rule at section 444, the new chapter requires the provider to immediately seek medical attention for the child and notify the Department as soon as possible, section 544. The dental care section 545 and the medical examination upon entering alternate care section 547 of the new chapter tracks source rule sections 445 and 447. With regard to the cost of prescription drugs section 546, the new chapter does not include the statement contained in the source rule that the drugs purchased through participating pharmacist are “ in excess of the Medicaid monthly maximum.” Source rule section 446.

Regarding drivers training and licenses for children in alternate care, the new chapter, at section 551, eliminates the requirement under the source rule, at section 451, for written authorization from the Family and Children’s Services program manager before a parent or guardian may authorize drivers’ training, provide payment or sign for driver’s licenses and permits.

The new chapter’s section 583, payments to family alternate care providers, and section 584, additional payments to family alternate care providers, track, with one exception, source rule sections 483 and 484. In the case of a child requiring an extraordinary degree of care for a documented serious emotional or behavioral disorder, the new chapter adds the provision that such disorder requires “continuous supervision” before the additional payment under “the highest level of need” category is authorized. Section 584.03.a.

The new chapter includes section 600, treatment foster care, and 700, residential care facilities, which are not similarly addressed in the source rule.

“Treatment foster care” is a new placement under the new chapter and appears to have elements of professional foster care under source rule section 485. “Treatment foster care” is

defined as “a family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision.” The new chapter explains that the services provided under this care are at a more intense level than provided in foster care and at a lower level than provided in residential care and include: participation in the development and implementation of the treatment plan, crisis intervention, documentation of services and the child’s behavior, participation as a member of a multi-disciplinary team and transportation. Like professional foster care, treatment foster care is based on the documented needs of the child and the inability of less restrictive settings to meet the child’s needs.

A treatment foster parent must meet all foster family licensure requirements as set forth in Department rule and complete 14 hours of additional training per year. Section 600.01. At least one treatment foster parent must be available 24/7. Section 600.02. Contractual payments up to \$1,800 [a month] is made to treatment foster parents or to an agency that is a private provider of such care. Sections 600.03 and 04. Treatment foster parents must implement a treatment plan, developed in conjunction with the child’s clinician. Section 600.05.

“Residential care facilities” under the new chapter appear to have elements of “intensive treatment facilities” (changed to “residential care facilities” in Docket No. 16-0601-0801) under source rule section 487. These facilities are licensed pursuant to Department rule, provide a more restrictive setting than treatment foster care and have employees who cover assigned shifts. Services provided include: assessment, supervision, treatment plan development and implementation, documentation, behaviorally focused skill building, service coordination or clinical case management, consultation, psychotherapy, psychiatric care and 24 hour crisis intervention. Placement of eligible children in the facility is based on the documented needs of the child and the inability of less restrictive settings to meet the child’s needs. Section 700. Where the Division of Behavioral Health is making full or partial payment, its prior authorization is required. Section 700.01. Payment to the provider is based upon its contract with the Department. Section 700.02.

The six-month reviews for children in alternative care placement under new chapter section 800 closely tracks source rule section 240, as modified by Docket No. 16-0601-0801. Under the new chapter, the members of the six-month review panel are chosen by and receive instructions from an authorized representative of the Division of Behavioral Health. Section 800.03. And, as elsewhere in the new chapter, “treatment plan” is used in lieu of “family services plan.”

The permanency hearings for children in alternate care placements under new chapter section 801, closely tracks the source rule section 250, as modified by Docket No. 16-0601-0801. One difference is the new chapter’s inclusion of the Department’s ability to request the court hold a permanency hearing for a child in accordance with section 16-2407(3), Idaho Code. Section 801.01.

SUMMARY

The proposed rule appears to be authorized under sections 16-2404(3), 56-202(b), 56-204A, 56-1003 and 56-1004, Idaho Code.

cc: Tamara Prisock, Department of Health and Welfare - Administrative Procedures Section;
Chuck Halligan

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-0801 (NEW CHAPTER)

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 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, 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, October 15, 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:

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 children under the Children's Mental Health (CMH) Program. In order to execute this responsibility, the rules governing Department-administered children's mental health services are being repromulgated in a new chapter under this docket. These rules are administered by the Division of Behavioral Health under the authority of the Department Director.

The new chapter of rules is IDAPA 16.07.37, "Children's Mental Health Services." The chapter defines the scope of services under the Children's Mental Health Program and describes the eligibility criteria, application requirements, services, and appeal process under this program. The new CMH chapter incorporates and replaces the rules pertaining to children's mental health services currently contained in IDAPA 16.06.01, "Rules Governing Family and Children's Services." IDAPA 16.06.01 is being amended under companion Docket No. 16-0601-0801.

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. N/A

NEGOTIATED RULEMAKING: Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was conducted in April and May of 2008. The Notice of Intent to Promulgate a Rule - Negotiated Rulemaking published in the April 2, 2008, Administrative Bulletin Vol. 08-4.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Chuck Halligan at (208) 334-6559.

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, 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 NO. 16-0737-0801

IDAPA 16, TITLE 07, CHAPTER 37

16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES

000. LEGAL AUTHORITY.

Under Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code, the Idaho Legislature has delegated to the Department the responsibility to establish and enforce rules and methods of administration needed to provide children's mental health services in accordance with the Children's Mental Health Services Act. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.07.37, "Children's Mental Health Services." ()

02. Scope. This chapter defines the appeal process, scope of services, eligibility criteria, and application requirements for the provision of children's mental health services by the Department. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost in the main office of the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. ()

003. ADMINISTRATIVE APPEALS.

01. Appeal from a Denial Based on Eligibility Criteria. Administrative appeals from a denial of children's mental health services based on the eligibility criteria under Section 407 of these rules are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

02. Appeal of Decision Based on Clinical Judgment. All decisions involving clinical judgment, which may include the category of services, the particular provider of services, or the duration of services, are reserved to the 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). ()

004. INCORPORATION BY REFERENCE.

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), Washington, D.C., American Psychiatric Association, 2000, is hereby incorporated by reference under this chapter of rules. 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. ()

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

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. ()

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. ()

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

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

05. Internet Website. The Department's internet website is found at <http://>

www.healthandwelfare.idaho.gov. ()

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." ()

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. ()

007. -- 008. (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. 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 defined under Section 39-5302, Idaho Code, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." ()

02. Availability to Work or Provide Service. Certain individuals are allowed to provide services after the criminal history and background check 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 and background check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. ()

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

For the purposes of these rules, the following terms apply: ()

01. Alternate Care. Temporary living arrangements outside the family home which may include licensed foster care, residential treatment, and other facilities licensed by the state to provide twenty-four (24) hour care for children in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." ()

02. Alternate Care Plan. A federally-required component of the treatment plan for children in alternate care. The alternate care plan contains elements related to reasonable efforts, the treatment plan, child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical and other information important to the day-to-day care of the child. An alternate care plan is part of the treatment plan for children placed in alternate care. ()

03. Area(s) of Concern. A circumstance or circumstances that brought a child and family to the attention of the Department. ()

04. Assessment. The gathering of historical and current clinical information through a clinical interview and from other available resources to identify the child's mental health issues, the child's strengths, the family's strengths, and the service needs. ()

05. Case Management. A change-oriented service provided to families that assures and coordinates the provision of an assessment, treatment planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. ()

06. Case Record. Compilation of all electronic and hard copy documentation relating to a child who is receiving or has received children's mental health services including legal documents, identifying information, and assessments. ()

- 07. Child.** An individual who is under the age of eighteen (18) years. ()
- 08. Children's Mental Health Services.** The children's mental health services are listed under Section 400 of these rules. These services are provided in response to the mental health needs of children eligible for services under Subsection 407 of these rules and their families in accordance with the provisions of the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. ()
- 09. Clinician.** Any of the direct service personnel with a Master's degree working in regional Children's Mental Health programs, including master's level social workers, psychologists, counselors, and family therapists. ()
- 10. Crisis Intervention.** A set of planned activities for a child eligible for services under Subsection 407 of these rules designed to reduce the risk of life-threatening harm to self or another person. ()
- 11. Crisis Response.** A service for a child that involves immediate actions taken to assess risk or intervene in an emergency as defined in Section 16-2403(6), Idaho Code. A determination of eligibility under Subsection 407 of these rules is not required for crisis response. ()
- 12. Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational, and family interventions provided on a regularly scheduled, typically daily, basis. ()
- 13. Department.** The Idaho Department of Health and Welfare or its designee. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code. ()
- 14. Desired Result.** Behaviorally-specific description of the child's and family's circumstances when the factors that brought the child and family to the Department's attention, either no longer exist or are significantly reduced. ()
- 15. Director.** The Director of the Idaho Department of Health and Welfare or his designee. ()
- 16. Emergency.** Emergency, as defined in Section 16-2403(6), Idaho Code, means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home. ()
- 17. Extended Family Member of an Indian Child.** As defined by the law or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. ()
- 011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**
For the purposes of these rules, the following terms apply: ()
- 01. Family.** A family is two (2) or more persons related by blood, marriage, or adoption. ()
- 02. Family Support Services.** Assistance provided to a family to assist them in caring for a child eligible for services under Subsection 407 of these rules. The purpose of family support services is to strengthen adults in their role as parents through the provision of services including: assistance with transportation, family counseling services, training, education, and emergency assistance funds in accordance with IDAPA 16.06.13, "Rules Governing Emergency Assistance for Families and Children." Family support services must be on the treatment plan. ()
- 03. Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. ()

- 04. Guardian.** ()
- a.** As set forth under Title 15, Chapter 5, Part 2, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, as set forth under Title 15, Chapter 5, Part 2, Idaho Code; or ()
- b.** The Department, an agency, or an individual, other than a parent, who is acting in the place of a parent (in loco parentis) and has assumed legal responsibility for, custody of, or possession of a child. ()
- 05. Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. ()
- 06. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 USC 1606. ()
- 07. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: ()
- a.** A member of an Indian tribe; or ()
- b.** Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. ()
- 08. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 USC 1901, et seq. ()
- 09. Indian Child's Tribe.** ()
- a.** The Indian tribe in which an Indian child is a member or eligible for membership; or ()
- b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. ()
- 10. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 USC 1602(c). ()
- 11. Inpatient Services.** Mental health and medical services provided to a child admitted to a psychiatric hospital. ()
- 012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.** ()
For the purposes of these rules, the following terms apply: ()
- 01. Licensed.** Facilities or programs that are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," or hospitals licensed in accordance with IDAPA 16.03.14, "Rules and Minimum Standards for Hospitals in Idaho." ()
- 02. Medicaid.** Idaho's Medical Assistance Program administered under Title XIX of the Social Security Act. ()
- 03. Outpatient Services.** Mental health services provided to a child who is not admitted to a psychiatric hospital or in a residential treatment setting. ()
- 04. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term "guardian" is not included in the definition of parent. ()
- 05. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." ()

()

06. P.L. 105-89. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. ()

07. Reasonable Efforts. A court determination that the Department offered or provided services to a family intended to assist a child eligible for services under Subsection 407 of these rules to remain in the family home, return to the family home, or to finalize a permanency plan. ()

08. Residential Treatment. A treatment facility licensed as a children's residential care facility that provides twenty-four (24) hour care in a highly-structured setting delivering substitute parental care and mental health services. ()

09. Respite Care. Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. ()

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.

For the purposes of these rules, the following terms apply: ()

01. 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." ()

02. Teens at Risk. Individuals attending Idaho secondary public schools who have been identified as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance use disorder. ()

03. Teen Early Intervention Specialist. A person with a master's degree in social work, psychology, marriage and family therapy, counseling, chemical dependency, addictive studies, psychiatric nursing, or very closely-related field of study contracted to work with teens at risk. ()

04. Treatment Foster Care. A service that provides clinical intervention for children eligible for services under Subsection 407 of these rules within the private homes of trained, licensed foster families. ()

05. Title IV-E. Title IV-E under the Social Security Act provides funding for foster care maintenance and adoption assistance payments for certain eligible children. ()

06. Title XIX (Medicaid). Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. ()

07. Treatment Plan. A written and signed agreement between the Department and a parent or guardian that serves as the guide for the provision of services. The plan contains treatment goals, areas of concern, desired results, and task responsibilities, including payment for services. The plan, developed with the child, when possible, and the child's parent or guardian clearly identifies who does what, when, and how. The treatment plan includes the alternate care plan, if the child is in alternate care. ()

08. Voluntary Placement Agreement. A standardized written agreement signed by a parent or guardian and the Department that outlines specific responsibilities of each party and authorizes the Department to place a child in alternate care. ()

09. Wraparound. Wraparound is a planning process that brings together a team of professionals and citizens working together to support children eligible for services under Subsection 407 of these rules and their families. Members of the team include the child, family members, representatives of public and private agencies, civic groups, and other community members. The services and supports focus on the strengths of the child and

family, are provided in the local community, and are customized to fit the individual culture of the family. ()

014. -- 099. (RESERVED).

**GENERAL PROVISIONS FOR CHILDREN RECEIVING MENTAL HEALTH
SERVICES AND THEIR FAMILIES
(Sections 100 Through 399)**

100. GENERAL REQUIREMENTS FOR CHILDREN AND FAMILIES.

01. Reasonable Efforts. The Department must document services offered or provided to a family to assist a child eligible for services under Subsection 407 of these rules to remain in the family home, return to the family home, or finalize a permanency plan. The court will make the determination of whether or not the Department's efforts were reasonable. ()

02. Least Restrictive Setting. Whenever possible, the Department will arrange placement: ()

a. In the least restrictive setting available that will meet the child's mental health treatment needs; and ()

b. That is in close proximity to the parent or guardian. ()

c. If the placement does not meet the requirements of Subsections 100.02.a. and 100.02.b. of this rule, the Department will provide written justification to the child's parent or guardian that the placement is in the best interests of the child. ()

03. Visitation for Child's Parent or Guardian. Visitation arrangements will be documented in the alternate care plan. ()

04. Notification of Change in Placement. ()

a. The Department will provide written notification to the child's parent or guardian no later than seven (7) days after a child's change of placement. ()

b. If an Indian child under jurisdiction of the court is relocated to another alternate care setting, similar notice must be sent to the child's Indian custodian, and the child's tribe. Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who will provide notice to the parent or Indian custodian and tribe. ()

101. TREATMENT PLAN DEVELOPMENT.

01. Development of Treatment Plan. A treatment plan will be completed within fifteen (15) days of the date the child was determined eligible for Children's Mental Health services. The parent or guardian will be given the opportunity to participate in the development of the treatment plan and to sign it. If the services are court-ordered and the parent or guardian refuses to sign the plan, the reason for their refusal will be documented on the plan. If the services are voluntary and the parent or guardian refuses to sign the plan, the Department may close the case. ()

02. Annual Development of Treatment Plan. The Department will develop a plan at least annually. The parent or guardian will be given the opportunity to participate in the annual development of the treatment plan and to sign it. ()

03. One Hundred Twenty Day Review. Treatment plans are to be reviewed with the family at least

once every one hundred twenty (120) days. ()

04. Goals and Tasks. Treatment plans must include a long-term goal that identifies specific behavior changes, has measurable desired results, and has specific tasks that identify who, how, and when the tasks will be completed. ()

102. -- 104. (RESERVED).

105. CASE RECORDS.

01. Electronic and Physical Files. The Department must maintain an electronic file and a physical file containing information on each child receiving children's mental health services. The physical file may include non-electronic documentation such as originals or copies of all court orders, birth certificates, social security cards and assessment information which originates outside the Department. ()

02. Storage of Records. All physical case records must be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed.

a. Exception for Adoption Records. Complete family case records involving adoptive placements must be forwarded to the Department's central adoption unit for permanent storage. ()

b. Exception for Case Records Involving an Indian Child. A case record involving an Indian child must be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. ()

106. -- 399. (RESERVED).

**CHILDREN'S MENTAL HEALTH SERVICES
(Sections 400 through 499)**

400. CHILDREN'S MENTAL HEALTH SERVICES.

The Department is the lead agency in establishing and coordinating community supports, services, and treatment for children eligible for services under Subsection 407 of these rules and their families. The following services, as defined under Sections 010 through 013 of these rules, are provided by or through Children's Mental Health field offices in each region: ()

- 01. Assessment.** ()
- 02. Case Management.** ()
- 03. Crisis Response.** ()
- 04. Day Treatment Services.** ()
- 05. Family Support Services.** ()
- 06. Independent Living.** ()
- 07. Inpatient Services.** ()
- 08. Outpatient Services.** ()
- 09. Residential Treatment.** ()
- 10. Respite Care.** ()
- 11. Treatment Foster Care.** ()

12. Wraparound. ()

401. TEENS AT RISK PROGRAM.

The Teens at Risk program is for individuals attending Idaho secondary public schools who have been identified as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance use, or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or a substance use disorder. The Department may enter into contracts for Teens at Risk programs in cooperation with Idaho public school districts. The Department reserves the right to make the final determination to award a school district a Teens at Risk contract. ()

01. Application. School districts may apply to the Department through a competitive application process. The Department will provide written information to the State Department of Education and interested school districts on the amount of funding available, closing date for submission of applications, and information on how to obtain application forms and instructions by July 1 of each year that funding is available. Only applications submitted on the prescribed forms and consistent with Department instructions will be considered for evaluation. ()

02. Contracting Process. ()

a. A team comprised of at least one (1) Department staff person, a representative from the state Department of Education, a representative from the local school district, and a parent, will evaluate the applications from school districts for contracts for Teens at Risk programs. The evaluation criteria will include the demonstrated need for the program in the school district and the contribution the school district is providing to the program, with a preference for rural school districts. The Department will consider the team recommendations and make the final determination of contracts for Teens at Risk programs. ()

b. The number of school districts awarded a Teens at Risk program will depend upon the amount of specific funding appropriated by the legislature for this program. ()

c. The Department will enter into a written contract with each school district awarded a Teens at Risk program. The contract will set forth the terms, services, data collecting, funding, and other activities prior to the implementation of the program. ()

03. Services. Teen early intervention specialists hired or under contract with the school district will be available to serve teens at risk within the school setting. Services will include group counseling, recovery support, suicide prevention and other mental health and substance use disorder counseling services as needed. Teens at risk who are not enrolled in public schools may only participate in services with the permission of the local school principal for the Teens at Risk program or when ordered by a judge. Parents of teens participating in the Teens at Risk program will not be charged for services provided by the program. ()

04. Outcomes. The Department will gather data and evaluate the effectiveness of the Teens at Risk program. In accordance with Section 16-2404A(7), Idaho Code, the Department may contract with state universities or colleges to assist in the identification of appropriate data elements, data collection, and evaluation. Data elements used to evaluate the program may include: ()

a. Teen arrests, detention, and commitments to state custody; ()

b. Teen suicide rates; ()

c. Impacts on juvenile mental health and drug courts; ()

d. Access to mental health services; and ()

e. Academic achievement and school disciplinary actions. ()

402. -- 404. (RESERVED).

405. ACCESSING CHILDREN'S MENTAL HEALTH SERVICES.

Children's mental health services may be accessed either through an application for services or through a court order for services. An application for services must be signed by a child's parent or guardian. ()

406. MENTAL HEALTH ASSESSMENT.

Once an application has been signed or a court order has been received for children's mental health services, the Department will schedule and conduct a mental health assessment. A Department clinician will either complete a mental health assessment, or, at the Department's discretion, accept an assessment completed by another mental health professional. In order to be considered, assessments completed by other mental health professionals must have occurred within ninety (90) days prior to the date of application or court order. The Department clinician will gather additional information, as needed, in order to complete the assessment process. ()

407. ELIGIBILITY DETERMINATION.

01. Eligibility Requirements. To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: ()

a. Be under eighteen (18) years of age; ()

b. Reside within the state of Idaho; ()

c. Have a DSM-IV-TR Axis I diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible Axis I diagnosis, although one (1) or more of these conditions may co-exist with an eligible Axis I diagnosis; and ()

d. Have a substantial functional impairment as assessed by using the Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Child Functional Assessment Scale (PECFAS). Substantial functional impairment requires a full eight (8) (CAFAS) or seven (7) (PECFAS) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: ()

i. Self-harmful behavior; ()

ii. Moods/emotions; or ()

iii. Thinking. ()

02. Court-Ordered Assessment, Treatment, and Services. The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. ()

03. Ineligible Conditions. A child who does not meet the requirements under Subsections 407.01 and 407.02 of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. ()

408. -- 409. (RESERVED).

410. NOTICE OF DECISION ON ELIGIBILITY.

01. Notification of Eligibility Determination. The Department will determine the child's eligibility for children's mental health services, in accordance with Section 407 of these rules, within thirty (30) calendar days of receipt of a signed application for services. Within five (5) working days of the determination of eligibility, the Department will send written notification to the child's parent or guardian of the eligibility determination. The written notice will include: ()

- a. The child's name and identifying information; ()
- b. A statement of the decision; ()
- c. A concise statement of the reasons for the decision; and ()
- d. The process for pursuing an administrative appeal regarding eligibility determinations. ()

02. Parental Rights. If the Department determines that an applicant is eligible for children's mental health services through the Department, the Department clinician must inform the child's parent or guardian that they have the right to reject the services offered by the Department, unless imposed by court order. ()

03. Other Information that Must be Provided to the Parent. The clinician must also inform the parent that fees may be charged for certain services, in accordance with IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," and that a parent has financial responsibility for the child. ()

04. Reapplication for Mental Health Services. If the Department determines that a child is not eligible for children's mental health services through the Department, the child's parent or guardian may reapply after six (6) months or at any time upon a showing of a substantial, material change in circumstances. ()

411. -- 414. (RESERVED).

415. TREATMENT PLAN.

A treatment plan will be developed by the Department, a parent or guardian, and the child, if appropriate, and may include the service provider. This plan will be specific, measurable, and realistic in the identification of the goal(s), relevant areas of concern, and desired results, and will be developed in accordance with the requirements under Section 101 of these rules. ()

416. OUTCOMES FOR CHILDREN'S MENTAL HEALTH SERVICES.

Outcomes for children's mental health services are measured through the administration of a satisfaction survey and a standardized functional assessment tool, such as CAFAS or PECFAS. ()

417. USE OF PUBLIC FUNDS AND BENEFITS.

Public funds and benefits will be used to provide services for children eligible for services under Subsection 407 of these rules and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources will be provided to minimize the need for institutional or alternate care placement. Services will be individually planned with the family to meet the unique needs of each child and family. Services will be provided without requiring that a parent or guardian relinquish custody of the child. ()

418. CHARGES TO PARENT(S).

Parent(s) of a child eligible for services under Subsection 407 of these rules who is receiving outpatient services either directly from the Department or through Department contracts with private providers, are responsible for paying for services provided to their child and to their family, including court-ordered children's mental health services. The amount charged for each service will be in accordance with the ability of parent(s) to pay as determined under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." Parent(s) will not be charged for services provided to their child through a Teens at Risk program. ()

419. SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.

The fee charged to parents for outpatient children's mental health services is determined using the sliding fee schedule under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 300. ()

420. FEE DETERMINATION FOR CHILDREN'S MENTAL HEALTH OUTPATIENT SERVICES.

Prior to the delivery of outpatient services, a "Fee Determination" form must be completed by a child's parent when requesting children's mental health services. The fee determination process includes the considerations found under IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 400. ()

421. -- 499. (RESERVED).

**ALTERNATE CARE
(Sections 500 Through 599)**

500. AUTHORITY FOR ALTERNATE CARE PLACEMENT.

The Department may place a child into alternate care under either of the following conditions in Subsection 500.01 or 500.02 of this rule: ()

01. Court Order. The Department may place a child into alternate care when the Department has been ordered by the Court to provide alternate care for a child; or ()

02. Voluntary Placement. The Department may place a child into alternate care with the Department when a parent or guardian is no longer able to maintain a child eligible for services under Subsection 407 of these rules in the child's home and the Department determines that the child would benefit from alternate care and treatment services. A treatment plan, alternate care plan, and a voluntary placement agreement must be developed by the Department and the parent or guardian prior to the child's placement in alternate care. The treatment plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. ()

a. A voluntary placement agreement entered into between the Department and a parent or the guardian of a minor child may be revoked at any time by the child's parent or guardian. ()

b. Voluntary alternate care placements exceeding one hundred eighty (180) days, without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. The Department may request the court hold a hearing for the child in accordance with 16-2407(3), Idaho Code. ()

501. PROTECTIONS FOR CHILDREN IN ALTERNATE CARE.

01. Statutory Requirements. The Department must arrange alternate care in accordance with the protections established in Public Law 96-272; the federal "Adoption Assistance and Child Welfare Act of 1980," as amended by Public Law 105-89; the Adoption and Safe Families Act of 1997; the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code; the Child Protective Act, Title 16, Chapter 16, Idaho Code; and the Indian Child Welfare Act. ()

02. Requirement for Licensure. A child that is placed in alternate care must be placed in a licensed foster home, licensed residential care facility, or in a licensed hospital. ()

03. Out-of-State Placement. Placement of a child in an alternate care setting outside the state of Idaho requires that the Department comply with the Interstate Compact on the Placement of Children, in accordance with Section 16-2102, Idaho Code. ()

502. (RESERVED).

503. DATE A CHILD ENTERED ALTERNATE CARE.

A child is considered to have entered alternate care on the date the child is actually placed in an alternate care setting. All alternate care benefits, eligibility determinations, and required reviews are based on the date the child entered alternate care. ()

504. TITLE IV-E AND TITLE XIX ELIGIBILITY.

Children placed in alternate care through the Department are eligible for Title IV-E funding and Title XIX, if they meet the eligibility requirements as defined in IDAPA 16.06.01, "Rules Governing Family and Children's Services." Application for these programs will be made by Department clinicians on the forms and in the manner prescribed by the Department's Division of Family and Community Services. ()

505. ALTERNATE CARE LICENSURE.

All private homes and facilities in Idaho providing alternate care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed, approved, or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. ()

506. ALTERNATE CARE CASE MANAGEMENT.

Case management must continue while the child is in alternate care and must include the following: ()

01. Preparation for Placement. Preparing a child for placement in alternate care is the joint responsibility of the child's parent or guardian, the child (when appropriate), the clinician and the alternate care provider. ()

02. Information for Alternate Care Provider. The Department and the child's parent or guardian must inform the alternate care provider of the alternate care provider's roles and responsibilities in meeting the needs of the child and provide the following information to the alternate care provider: ()

a. Any medical, health, and dental needs of the child including the names and addresses of the child's doctor, dentist, and other health providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; ()

b. The child's current functioning and behaviors; ()

c. The child's history, past experiences, and reasons for placement into alternate care; ()

d. The child's cultural and racial identity; ()

e. Any educational, developmental, or special needs of the child; ()

f. Names and addresses of the child's current or last school attended, including homeschool or alternate school, if applicable; ()

g. The child's interests and talents; ()

h. The child's attachment to current caretakers; ()

i. The individualized and unique needs of the child; ()

j. Procedures to follow in case of emergency; and ()

k. Any additional information that may be required to meet the needs of the child. ()

03. Consent for Medical Care. A parent or guardian must sign a Departmental form of consent for medical care and keep the clinician advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the case record. ()

04. Financial Arrangements. The clinician is responsible for explaining the financial and payment arrangements to the alternate care provider and must complete the documentation required for payment to the alternate care provider. ()

05. Contact with Child. The child's parent or guardian, the clinician, the alternate care provider, and the child, if of appropriate developmental age, must establish a schedule for frequent and regular visits between the child and the family and the clinician or his designee. ()

a. Face-to-face contact in the alternate care or treatment setting between the child and the clinician must occur at least monthly. ()

b. Face-to-face contact between the child's parent or guardian and the clinician must occur at least

monthly. ()

c. Frequent and regular contact between the child, the child's parent or guardian, and other family members will be encouraged and facilitated unless it is specifically determined by the Department not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. ()

d. When a child is placed in alternate care in another state, a Department clinician must maintain at least monthly contact with the child, the child's family, and the alternate care provider with whom he has been placed as long as the state of Idaho has the placement responsibility for the child, in accordance with Section 500 of these rules. The supervising agency in the state where the child is living will be requested to maintain monthly, face-to-face contact with the child and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children. ()

06. Transition Planning. Planning for transition from alternate care will be developed with all concerned parties. Transition planning will be initiated at the time of placement and completed prior to the child's return home or to another living arrangement. ()

07. Financial and Support Services. As part of the transition planning, Departmental and community resources will be coordinated to expedite access to Department financial and medical assistance and community support services. ()

507. -- 521. (RESERVED).

522. ALTERNATE CARE PLANNING.

Alternate care planning is mandated by the provisions of Sections 471(a)(15) and 475, P.L. 96-272. ()

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. ()

a. The purpose of the plan is to facilitate the provision of mental health treatment services and the safe return of the child to his or her own home as expeditiously as possible, or to make other permanent arrangements for the child if such return is not feasible. ()

b. The alternate care plan must be included as part of the treatment plan. ()

02. Written Alternate Care Plan. The Department must have completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care. ()

a. A parent or guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. ()

b. The alternate care plan must include documentation that a parent or guardian has been provided written notification of: ()

i. Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; ()

ii. Any change of placement, when the child is relocated to another alternate care or institutional setting as soon as possible, but no later than seven (7) days after placement; and ()

iii. Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. ()

c. All parties involved in developing the alternate care plan, including the alternate care provider, parent or guardian, and the child, if of appropriate developmental age: ()

i. Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and ()

ii. Will receive a copy of the alternate care plan from the Department. ()

523. -- 535. (RESERVED).

536. PARENTAL FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.

In accordance with Sections 56-203B and 16-2406, Idaho Code, parent(s) are responsible for costs associated with the care of their child in alternate care. ()

01. Notice of Parental Responsibility. The Department will provide the parent(s) with written notification of their responsibility to contribute toward the cost of their child's support, treatment, and care, including clothing, medical, incidental, and educational costs. ()

02. Financial Arrangements with Parent(s). Parent(s) are responsible to reimburse the Department for the costs of alternate care when their child is placed in alternate care in accordance with a court order or voluntary placement agreement. ()

a. Parents are expected to contribute to the cost of their child's care, but parents will not be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. ()

b. The Department will refer the parent(s) to the Bureau of Child Support Services for support payment calculation and payment arrangements. ()

537. SUPPORT AGREEMENTS AND SUPPORT ORDERS.

01. Support Agreement for Voluntary Placement. If the placement is voluntary, a parent must sign a support agreement that specifies the amount of support to be paid to the Department, when it is to be paid, and the address to which it is to be paid. ()

02. Support Order for Payment of Involuntary Placement Costs. In the case of a court-ordered placement, if no support agreement has been reached with a parent prior to the court hearing, the Department may request the Court hold a support hearing to establish a support order for payment of involuntary placement costs. ()

538. -- 539. (RESERVED).

540. INSURANCE COVERAGE.

The parent or guardian must inform the Department of all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health, and dental insurance coverage is available for the child, the parent must acquire and maintain such insurance. ()

541. MEDICAL CARD FOR CHILDREN IN ALTERNATE CARE.

The Department will issue a medical card to cover medical expenses for each child placed in alternate care. ()

542. - 543. (RESERVED).

544. MEDICAL EMERGENCIES.

In case of serious illness, the alternate care provider must immediately seek medical attention for the child and notify the Department as soon as possible. A parent or guardian, the court in an emergency, or the Department, if it is the guardian of the child, has the authority to consent to major medical care or hospitalization in accordance with Section 39-4504, Idaho Code. ()

545. DENTAL CARE.

Each child age three (3) years or older who is placed in alternate care must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter according to a schedule prescribed by the

dentist. ()

01. Costs Paid by Medicaid. If dental care not included in the state medical assistance program is recommended, a request for payment will be submitted to the state Medicaid dental consultant. ()

02. Emergencies. Emergency dental services will be provided for children in alternate care and paid for by the Department, if there are no other financial resources available. ()

546. COSTS OF PRESCRIPTION DRUGS.
The Department will purchase prescribed drugs, at the Medicaid rate, for a child in alternate care through participating pharmacies. ()

547. MEDICAL EXAMINATION UPON ENTERING ALTERNATE CARE.
Within thirty (30) days of entering alternate care, each child will receive a medical examination to assess the child's health status, and thereafter according to a schedule prescribed by the child's physician or other health care professional. ()

548. -- 550. (RESERVED).

551. DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.
Only a parent or guardian of a child in alternate care may authorize drivers' training, provide payment, and sign for drivers' licenses and permits. ()

552. -- 582. (RESERVED).

583. PAYMENT TO FAMILY ALTERNATE CARE PROVIDERS.
Monthly payments for care provided by family alternate care providers:

| Family Alternate Care Payments - Table 583 | | | |
|--|-------|-------|-------|
| Ages | 0-5 | 6-12 | 13-18 |
| Monthly Room and Board | \$274 | \$300 | \$431 |

()

01. Gifts. An additional thirty dollars (\$30) for Christmas gifts and twenty dollars (\$20) for birthday gifts will be paid in the appropriate months. ()

02. Clothing. Costs for clothing will be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. ()

03. School Fees. School fees due upon enrollment will be paid directly to the school or to the foster parents, based upon the Department's determination of the child's needs. ()

584. ADDITIONAL PAYMENTS TO FAMILY ALTERNATE CARE PROVIDERS.
For those children who require additional care above room, board, shelter, daily supervision, school supplies, and personal incidentals, the Department may pay the family alternate care provider an additional amount to that paid under Section 583 of these rules. The family alternate care rate is based upon a continuous ongoing assessment of the child's circumstances which necessitate special rates as well as the care provider's ability, activities, and involvement in addressing those special needs. Additional payment will be made as follows:

| Additional Family Alternate Care Payments - Table 584 | | |
|---|------------------------|-----------------------|
| Lowest Level of Need | Moderate Level of Need | Highest Level of Need |
| \$90 per month | \$150 per month | \$240 per month |

- ()
- 01. Lowest Level of Need.** Ninety dollars (\$90) per month for a child requiring a mild degree of care for documented conditions including: ()
- a. Chronic medical problems; ()
 - b. Frequent, time-consuming transportation needs; ()
 - c. Behaviors requiring extra supervision and control; and ()
 - d. Need for preparation for independent living. ()
- 02. Moderate Level of Need.** One hundred fifty dollars (\$150) per month for a child requiring a moderate degree of care for documented conditions including: ()
- a. Ongoing major medical problems; ()
 - b. Behaviors that require immediate action or control; and ()
 - c. Alcohol or other substance use disorder. ()
- 03. Highest Level of Need.** Two hundred forty dollars (\$240) per month for a child requiring an extraordinary degree of care for documented conditions including: ()
- a. Serious emotional or behavioral disorder that requires continuous supervision; ()
 - b. Severe developmental disability; and ()
 - c. Severe physical disability such as quadriplegia. ()
- 04. Reportable Income.** Additional payments for more than ten (10) qualified children received during any calendar year must be reported as income to the Internal Revenue Service. ()

585. -- 599. (RESERVED).

600. TREATMENT FOSTER CARE.

A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the treatment plan, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children eligible for services under Subsection 407 of these rules is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs. ()

- 01. Qualifications.** A treatment foster parent must: ()
- a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"; and ()
 - b. Complete fourteen (14) hours of additional training per year. The fourteen (14) hours of additional training will be specified in an agreement developed between the treatment foster parents and the Department. ()
- 02. Availability.** At least one (1) treatment foster parent must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. ()

03. Payment. The Department will pay treatment foster parents up to one thousand eight hundred (\$1,800) dollars, which includes the monthly payment rate specified in Section 583 of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department to enable them to fulfill the requirements for treatment foster parents under the treatment plan referenced in Subsection 600.05 of this rule. ()

04. Payment to Contractors. The Department may also provide treatment foster care through a contract with an agency that is a private provider of treatment foster care. The Department will specify the rate of payment in the contract with the agency. ()

05. Treatment Plan. The treatment foster parent(s) must implement a treatment plan, developed in conjunction with the child's clinician, for each child in their care. This plan is incorporated as part of the treatment plan identified in Section 101 of these rules. ()

601. -- 699. (RESERVED).

700. RESIDENTIAL CARE FACILITIES.

Residential care facilities provide a more restrictive setting than treatment foster care. Residential care facilities in Idaho are licensed under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing" to provide residential care for children and staffed by employees who cover assigned shifts. Children placed in residential care facilities receive services that may include the following: assessment, supervision, treatment plan development and implementation, documentation, behaviorally focused skill building, service coordination or clinical case management, consultation, psychotherapy, psychiatric care, and twenty-four (24) hour crisis intervention. Placement into a residential care facility for children eligible for services under Subsection 407 of these rules is based on the documented needs of the child and the inability of less restrictive settings to meet the child's needs. ()

01. Prior Authorization. Prior authorization must be obtained from an authorized representative in the Department's Division of Behavioral Health for placement of a child in a residential care facility where the Division of Behavioral Health is making full or partial payment. ()

02. Payment. When care is purchased from private providers, payment will be made in accordance with a contract authorized by the Department, based on the needs of each child being placed and the services to be provided. ()

701. -- 799. (RESERVED).

800. SIX-MONTH REVIEWS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.

When a judicial review does not occur at the end of a six (6) month period for any child in an alternate care placement, the Department will conduct a case review to assure compliance with all applicable state and federal laws, and to ensure the plan focuses on the goals of safety, permanency, and well-being of the child. ()

01. Notice of Six-Month Review. The parent or guardian, foster parent of a child, relative providing care for the child or any preadoptive parent are to be provided with notice of their right to be heard in the six-month review. In the case of an Indian child, the child's tribe and any Indian custodian must also be provided with notice. This must not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the review solely on the basis of the receipt of such notice. Participants have the right to be represented by the individual of their choice. ()

02. Procedure in the Six-Month Review. The parties who received notice will be given the opportunity to participate in the case review. ()

03. Members of Six-Month Review Panel. The six-month review panel must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent or guardian. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes, and citizens qualified by experience, professional background, or training. Members of the panel will be chosen by and receive instructions from an authorized representative in the Department's Division of Behavioral Health, to enable them to understand the review process and their roles as participants. ()

04. Considerations in Six-Month Review. Whether conducted by the court in a review hearing or a Department review panel, under state law, federal law and regulation, each of the following must be addressed in a six-month review: ()

- a.** Determine the extent of compliance with the treatment plan; ()
- b.** Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; ()
- c.** Review compliance with the Indian Child Welfare Act, when applicable; ()
- d.** Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and ()
- e.** Project a date by which the child may be returned and safely maintained at home or placed for adoption, guardianship, or other permanent placement. ()

05. Recommendations and Conclusions of Six-Month Review Panel. Following the six-month review, written conclusions and recommendations will be provided to all participants, subject to Department safeguards for confidentiality. The document containing the written conclusions and recommendations must also include appeal rights. ()

801. PERMANENCY HEARINGS FOR CHILDREN IN ALTERNATE CARE PLACEMENTS.

Under Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than twelve (12) months after the date of the child's placement in alternate care and no later than every twelve (12) months thereafter while the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department. ()

01. Department Request for Permanency Hearing. The Department may request the court hold a permanency hearing for a child in accordance with Section 16-2407(3), Idaho Code. ()

02. Attendance at Permanency Hearings. The permanency hearing includes, at a minimum, the child's parent or guardian, foster parent of a child, and any preadoptive parent or relative providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (if there is one), must also be included in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not to be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis of the receipt of such notice. ()

03. Judicial Determinations. ()

a. The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanency plan for the child and issue an order specifying the permanency plan. ()

b. In cases where the Department has documented, in the alternate care plan component of the treatment plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist. ()

802. -- 999. (RESERVED).