

Dear Senators ANDREASON, Coiner & Werk, and  
Representatives SCHAEFER, Bradford & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Industrial Commission: IDAPA 17.02.04 - Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits (Docket #17-0204-0801) and 17.02.08 - Miscellaneous Provisions (Docket #17-0208-0801).

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 7-11-08. 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 8-8-08.

\_\_\_\_\_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:** Subcommittees for Administrative Rules Review of the Senate Commerce and Human Resources Committee and the House Commerce and Human Resources Committee

**FROM:** Eric Milstead, Principal Research Analyst

**DATE:** June 18, 2008

**SUBJECT:** Idaho Industrial Commission - IDAPA 17.02.04 (Docket No. 17-0204-0801) and IDAPA 17.02.08 (Docket No. 17-0208-0801)

### **1. IDAPA 17.02.04 (Docket No. 17-0204-0801)**

The Idaho Industrial Commission has submitted notice of temporary and proposed rulemaking at IDAPA 17.02.04 -- Administrative Rules of the Industrial Commission Under The Workers' Compensation Law -- Benefits. According to the Commission, negotiated rulemaking was not conducted because the temporary and proposed rule is not controversial. The temporary and proposed rule implements the provisions of Title 72, Chapter 11, Idaho Code, the "Peace Officer and Detention Officer Temporary Disability Act." The act was adopted by the 2007 Legislature and authorizes the Commission to adopt administrative rules. The temporary and proposed rule governs reimbursements under the Act and provides application procedures for eligible employers to seek reimbursement from the fund. The temporary and proposed rule appears to be within the Commission's authority provided in section 72-1104, Idaho Code.

### **2. IDAPA 17.02.08 (Docket No. 17-0208-0801)**

The Idaho Industrial Commission has submitted notice of temporary and proposed rulemaking at IDAPA 17.02.08 -- Miscellaneous Provisions. According to the Commission, negotiated rulemaking was not conducted because this temporary and proposed rule is simply a clarification of an existing rule that required immediate implementation. The temporary and proposed rule accomplishes the following:

- Revises the definition of a medical provider to include any person or entity acting on behalf of a provider with respect to medical charges.
- Adjusts the amount related to claims of attorneys and physicians and medical related services and also adjusts conversion factors paid to medical providers as directed by section 72-803, Idaho Code.

The temporary and proposed rule appears to be within the Commission's authority provided in Title 72, Chapter 7, Idaho Code, and section 72-803, Idaho Code.

cc: Industrial Commission  
Mindy Montgomery, Director, & Nancy Beeson

## IDAPA 17 - INDUSTRIAL COMMISSION

### 17.02.04 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- BENEFITS

DOCKET NO. 17-0204-0801

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-1104, 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 July 16, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Section 72-1104, Idaho Code, part of the Peace Officer and Detention Officer Temporary Disability Act enacted in 2007, requires the Industrial Commission to adopt rules governing reimbursements under this law. Provides application procedures for eligible employers to seek reimbursement from the fund. Required sections are being added.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** In compliance with IDAPA 04.11.04.811, negotiated rulemaking was not conducted because it is not considered controversial.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule and proposed rule, contact Nancy Beeson, Commission Secretary, 208-334-6017.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2008.

DATED this 22nd day of May, 2008.

Mindy Montgomery, Director  
317 Main Street  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: 208/334-6059; Fax: 208/334-2321

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0204-0801**

**004. RULE GOVERNING APPLICATIONS FOR REIMBURSEMENT FROM THE PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY FUND.**

**01. Eligibility.** An employer who has paid the full base salary due to a peace officer or detention officer, as defined in Section 72-1103, Idaho Code, may apply for reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund under the provisions of Section 72-1104, Idaho Code, for the amount of that salary not covered by the workers' compensation income benefit payments remitted to the employer during the time that such officer is: (7-1-08)T

**a.** Temporarily incapacitated and unable to perform employment duties; (7-1-08)T

**b.** Is otherwise eligible to receive workers' compensation benefits; and (7-1-08)T

**c.** Is one whose incapacitating injury was incurred in the performance of employment duties on or after July 1, 2008, either: (7-1-08)T

**i.** When responding to an emergency; or (7-1-08)T

**ii.** When in the pursuit of an actual or suspected violator of the law. (7-1-08)T

**02. Application.** An employer eligible to seek reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall make application on the form provided by the Commission for that purpose. Applications shall be sent to: Idaho Industrial Commission, ATTN: Peace Officer Fund, PO Box 83720, Boise, Idaho 83720-0041. (7-1-08)T

**03. Payments.** Payments to employers requesting reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall be made within thirty (30) days of receipt of an approved request for reimbursement, subject to the availability of money in that fund. (7-1-08)T

**04. Disputes.** Disputes regarding eligibility for reimbursement from The Peace Officer and Detention Officer Temporary Disability Fund will be decided by the Commission upon written request by the employer. There is no appeal from the reimbursement dispute decisions of the Commission under this section. Disputes regarding eligibility of an injured peace officer or detention officer for workers' compensation benefits, including the continuation of salary benefit set out in Section 72-1104, Idaho Code, will be decided in accordance with the Commission's current rules and procedures governing disputes in all other workers' compensation claims. (7-1-08)T

**005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- WEB ADDRESS.**

**01. Office Address.** The Industrial Commission office is located at 700 S. Clearwater Lane, Boise, Idaho, 83712. (7-1-08)T

**02. Mailing Address.** The correspondence mailing address is P.O. Box 83720, Boise, Idaho, 83720-0041. (7-1-08)T

**03. Office Hours.** This office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday except for legal holidays. (7-1-08)T

**04. Website.** The Industrial Commission's Web site address is <http://www.iic.idaho.gov>. (7-1-08)T

**05. Telephone and Fax.** The telephone number is (208) 334-6000, or toll free 1-800-950-2110, and the facsimile number is (208) 334-2321. (7-1-08)T

**0046. -- 190. (RESERVED).**

# IDAPA 17 - INDUSTRIAL COMMISSION

## 17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0801

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is May 2, 2008 and July 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code, and Section 72-803 of the 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 July 16, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To clarify that these rules are applicable to all entities providing services to injured workers even as agents. Changes the definition of a medical "provider" to include any person or entity acting on behalf of a provider with respect to medical charges payable under this rule.

Mandated by Section 72-803, Idaho Code, requiring an adjustment each fiscal year by the amount determined by the Director of Health and Welfare in accordance with the procedure set out in Section 56-136, Idaho Code. Adjusts the conversion factors paid to medial providers by the inflation factor percentage determined by the Director of health and Welfare for Medicaid covered services.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Necessary to protect the public health, safety, or welfare and compliance with deadlines in amendments to governing law.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** In compliance with IDAPA 04.11.04.811, negotiated rulemaking was not conducted because this rule is simply a clarification of an existing rule that required immediate implementation.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule and proposed rule, contact Nancy Beeson, Commission Secretary, 208-334-6017.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2008.

DATED this 22nd day of May, 2008.

Mindy Montgomery, Director  
317 Main Street  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: 334-6059; Fax: 334-2321

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-0801**

**031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES UNDER THE IDAHO WORKERS' COMPENSATION LAW.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law: (3-12-07)

**01. Definitions.** Words and terms used in this rule are defined in the subsections which follow. (6-1-92)

**a.** "Acceptable charge" means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider, or the charge agreed to pursuant to written contract. (3-12-07)

**b.** "Ambulatory Surgery Center (ASC)" means a facility providing surgical services on an outpatient basis only. (4-2-08)

**c.** "Hospital" is any acute care facility providing medical or hospital services and which bills using a Medicare universal hospital billing form. (4-2-08)

**i.** Large hospital is any hospital with more than one hundred (100) acute care beds. (4-2-08)

**ii.** Small Hospital is any hospital with one hundred (100) acute care beds or less. (4-2-08)

**d.** "Provider" means any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which ~~is~~ is compensable under Idaho's Workers' Compensation Law. This includes any person or entity acting for, on behalf of, or in place of a provider, or one that has acquired or succeeded to the interests of a provider with respect to charges payable under this rule. (~~3-12-07~~)(5-2-08)T

**e.** "Payor" means the legal entity responsible for paying medical benefits under Idaho's Workers' Compensation Law. (6-1-92)

**f.** "Medical Service" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply. (3-12-07)

**g.** "Reasonable," means a charge does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined below. (3-12-07)

**h.** "Usual" means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (3-12-07)

**i.** "Customary" means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (3-12-07)

**02. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services. (3-12-07)

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by providers other than hospitals and ASCs. The standard for determining the acceptable charge for hospitals and ASCs shall be: (4-2-08)

- i. For large hospitals: Eighty-five percent (85%) of the appropriate inpatient charge. (4-2-08)
- ii. For small hospitals: Ninety percent (90%) of the appropriate inpatient charge. (4-2-08)
- iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the appropriate charge. (4-2-08)
- iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (4-2-08)
- v. Paragraph 031.02.e., shall not apply to hospitals or ASCs. The Commission shall determine the appropriate charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. (4-2-08)

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	<del>\$58.49</del> <u>60.05</u>
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	<del>\$140</del> <u>4.48</u>
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	<del>\$1259</del> <u>.00</u>
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	<del>\$1103</del> <u>.52</u>
Surgery - Group Four	20000 - 20615 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Musculoskeletal System Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	<del>\$857</del> <u>.72</u>

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
Surgery - Group Five	10000 - 12999 29000 - 29799	Integumentary System Casts & Strapping	<del>\$679.14</del>
Radiology	70000 - 79999	Radiology	<del>\$857.72</del>
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	<del>\$456.44</del>
Medicine - Group Two	90800 - 92999 96040 - 96999 99000 - 99607	Psychiatry & Medicine Assessments & Special Procedures E / M & Miscellaneous Services	<del>\$64,506.56</del>
Medicine - Group Three	93000 - 93999 95000 - 96020	Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures	<del>\$792.24</del>

~~(4-2-08)(7-1-08)T~~

**c.** The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (4-2-08)

**d.** Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY), starting with FY 2009, as determined by the director of the Department of Health and Welfare using the methodology set forth in section 56-136, Idaho Code, pursuant to Section 72-803, Idaho Code. (4-2-08)

**e.** Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.02.b., determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. (4-2-08)

**f.** Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: (3-12-07)

- i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (3-12-07)
- ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (3-12-07)
- iii. Modifier 80: Twenty-five percent (25%) of coded procedure. (3-12-07)
- iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (3-12-07)