

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Dept. of Health & Welfare:

IDAPA 16.03.05 – Rules Governing eligibility for Aid to the Aged, Blind and Disabled (AABD)
(Docket No. 16-0305-0904) .

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than
12-22-09. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting
on the enclosed rules is 1-21-09.

_____The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: December 3, 2009

SUBJECT: Department of Health and Welfare:
IDAPA 16.03.05 – Rules Governing eligibility for Aid to the Aged, Blind and Disabled (AABD) (Docket No. 16-0305-0904) (Temporary and Proposed)

The Department of Health and Welfare submits temporary and proposed rule Docket No. 16-0305-0904 - Rules Governing eligibility for Aid to the Aged, Blind and Disabled (AABD). The Governor's justification for the temporary rule is to meet requirements in federal law. The temporary rule will go into effect on January 1, 2010. This rulemaking will be presented to the 2010 Legislature as a temporary rule. Review as a pending rule will occur in 2011.

The purpose of the temporary and proposed rule is to comply with the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. The Department states that the temporary and proposed rule will align three programs (Medicare Savings Program for Qualified Medicare Beneficiary, the Specified Low-Income Medicare Beneficiary, and the Qualifying Individual for Medicare Part B) with the Full-Benefit Low-Income Subsidy Program resource limits.

According to the Department, the temporary and proposed rule is authorized pursuant to section 56-202, Idaho Code, and sections 112 and 113(b) of the MIPPA, copies of which have been provided by the Department.

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority under Idaho's public assistance law. Section 112 of the MIPPA amended the term "qualified medicare beneficiary" at 42 U.S.C. section 1905(p)(1)(C) to provide a limitation on resources, beginning January 1, 2010, not to exceed those under 42 U.S.C. section

1860D-14(a)(3). Those limitations are three times the maximum amount of resources that an individual may have and obtain benefits under the Supplemental Security Income program in

2006, as adjusted by the consumer price index. Section 113(b) of the MIPPA imposed an effective date of January 1, 2010, on a requirement for states to accept certain transmitted data.

Not cited as authority for this temporary and proposed rule are sections 56-203(b) and (g), Idaho Code. Section 56-203(b) provides the Department with the power to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services and other matters of mutual concern. Section 56-203(g) grants the Department the power to define persons entitled to medical assistance in such terms as will meet requirements for federal financial participation in medical assistance payments.

According to the Department, no fees or charges are imposed by the temporary and proposed rule. The Department states that the temporary and proposed rule has an anticipated fiscal year 2010 impact on the General Fund of \$199,700, and an additional \$777,700 federal funds impact. For fiscal year 2011, the anticipated General Fund impact is \$1,834,000, and an additional \$5,496,300, federal fund impact.

According to the Department, negotiated rulemaking was not conducted because the rulemaking is being made to align with federal regulations. The Department states that public hearing(s) will be scheduled if requested in writing by 25 persons, a political subdivision or an agency, not later than August 19, 2009. All written comments must be delivered to the Department on or before December 23, 2009.

ANALYSIS

Section 050.02 has been added by the temporary and proposed rule to provide that the application date for low-income subsidy applicants identified on the Social Security Administration data transmission is the day they applied for the low-income subsidy.

Section 810.06 of the temporary and proposed rule, dealing with Qualified Medicare Beneficiary, eliminates certain dollar resource limits and instead references the resource standard to the full low-income subsidy as defined in 42 U.S.C. 1395w-114. Section 811.05, dealing with Specified Low Income Medicare Beneficiary (SLMB), makes the same change and adds that

the resource exclusions used for AABD are used for this group. Section 813.05, dealing with Qualified Disabled and Working Individual (QDWI), makes the same change and adds that the resource exclusions used for AABD are used with this group.

Section 811, dealing with the SLMB, removes the reference to the SLMBII group, although that section does not describe the distinction between the SLMBI and SLMBII groups. Presumably, the SLMBII group is now the Qualified Individual (QI), which is addressed in new section 812. If the person meets the specified requirements, Medicaid pays the Medicare Part B premiums for a QI, and the income and resource exclusions and disregards for AABD are used for this group. The QI requirements parallel the SLMB requirements under section 811, with the exceptions that: the QI cannot be eligible for any other type of Medicaid; there is an annual limit on participants served, based on availability of federal funds; and the monthly income limit is 135% of the Federal Poverty Guidelines (compared to 120% for the SLMB).

SUMMARY

The Department's temporary and proposed rule changes appear to be authorized under sections 56-202(b) and 56-203(b) and (g), Idaho Code.

cc: Department of Health and Welfare:
Tamara Prisock;
Susie Cummins

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0904

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of these temporary rules is January 1, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 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 December 16, 2009.

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:

The Department is amending these rules to comply with the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. These rules align the Medicare Savings Program for Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying Individual (QI) for Medicare Part B with the Full-Benefit Low-Income Subsidy (LIS) Program resource limits.

The Social Security Administration provides the Department a list of LIS applicants. These rules provide that the Medicare Savings Program application date is the day they apply for LIS.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to meet requirements in federal law.

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

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

The fiscal impact for this rulemaking is based on the Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying Individual (QI) for Medicare Part B Premiums. For SFY 2010, the anticipated state general funds impact is \$199,700 and federal matching funds of \$777,700. For SFY 2011, the anticipated state general funds impact is \$1,834,000 and federal matching funds of \$5,496,300. These amounts are reflected in the Medicaid Trustee and Benefit expenditure projections for the state fiscal years of 2010 and 2011.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these are being amended to align with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

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 December 23, 2009.

DATED this 4th day of November, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0305-0904

050. APPLICATION FOR ASSISTANCE.

01. Application Submitted by Participant. The participant must submit an application form to the Department. An adult participant, a legal guardian or a representative, must sign the application form.

~~(7-1-99)~~(1-1-10)T

02. Application Submitted Through Social Security Administration (SSA) Low-Income Subsidy Data Transmission. For low-income subsidy applicants identified on the SSA data transmission, the protected Medicare Savings Program application date is the day they applied for the low-income subsidy (LIS). (1-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

810. QUALIFIED MEDICARE BENEFICIARY (QMB).

A person meeting all requirements in Subsections 810.01 through 810.07 is eligible for QMB. QMB Medicaid pays Medicare premiums, coinsurance, and deductibles. (3-15-02)

01. Medicare Part A. The participant must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

02. Nonfinancial Requirements. The participant must meet the Medicaid residence, citizenship, support cooperation, and SSN requirements. (7-1-99)

03. Income. Monthly income must not exceed one hundred percent (100%) of the ~~official poverty line defined by the Federal Office of Management and Budget (OMB) Federal Poverty Guidelines (FPG)~~ Federal Poverty Guidelines (FPG). The single person income limit is the poverty line for a family of one (1) person. The couple income limit is the poverty line for a family of two (2) persons. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual ~~Federal poverty line~~ FPG revision is published. AABD cash is not counted as income. The income exclusions and disregards used for AABD are used for QMB. ~~(3-20-04)~~(1-1-10)T

04. Dependent Income. Income of the dependent child, parent, or sibling is not counted. (7-1-99)

05. QMB Dependent Family Member Disregard. A dependent family member is a minor child, adult child meeting SSA disability criteria, parent or sibling of the participant or spouse living with the participant. The family member is or could be claimed on the Federal tax return of the participant or spouse. A participant with a dependent family member has an income disregard based on family size. The spouse is included in family size, whether or not the spouse is also participant. The disregard is based on the official poverty line income as defined by the OMB. The disregard is the difference between the poverty line for one (1) person, or two (2) persons if the

participant has a spouse, and the poverty line for the family size including the participant, spouse, and dependent. (7-1-99)

06. Resource Limit. *The resource limit for a single participant is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000). Resources must not exceed the resource standard applied to the full low-income subsidy defined in 42 U.S.C. 1395w-114 of the Social Security Act. The resource exclusions used for AABD are used for QMB.* (3-20-04)(1-1-10)T

07. Effective Dates. The effective date of QMB coverage is no earlier than the first day of the month after the approval month. A QMB participant is not entitled to backdated Medicaid. (7-1-99)

811. SPECIFIED LOW INCOME MEDICARE BENEFICIARY (SLMB).

A person meeting all requirements in Subsections 811.01 through 811.076 is eligible for SLMB. Medicaid pays the Medicare Part B premiums for a SLMB. The income and resource exclusions and disregards used for AABD are used for SLMB. (3-20-04)(1-1-10)T

01. Other Medicaid. The SLMB may be eligible for other Medicaid. *The SLMB II cannot be eligible for any other type of Medicaid.* (3-20-04)(1-1-10)T

02. Medicare Part A. The SLMB must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

03. Nonfinancial Requirements. The SLMB must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. (7-1-99)

04. Income. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual *Federal poverty line* FPG revision is published. *The monthly income limit depends on the SLMB group.* The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit for *SLMB Group I* is up to one hundred twenty percent (120%) of the *Federal poverty line* FPG. *Monthly income for SLMB Group II is at least one hundred and twenty percent (120%) and not more than one hundred thirty five percent (135%) of the Federal poverty line.* (3-20-04)(1-1-10)T

05. Resource Limit. *The resource limit for a single person is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000). Resources must not exceed the resource standard applied to the full low-income subsidy defined in 42 USC 1395w-114 of the Social Security Act. The resource exclusions used for AABD are used for SLMB.* (7-1-99)(1-1-10)T

06. Coverage Limits. *Medicaid pays the Medicare Part B premium for SLMB Group I. There is no annual limit on participants served. Medicaid pays the Medicare Part B premium for SLMB Group II. There is an annual limit on participants served, based on availability of Federal funds. New applications are denied when the annual limit is reached.* (3-20-04)

076. Effective Dates. SLMB coverage begins on the first day of the application month. SLMB coverage may be backdated up to three (3) calendar months before the application month. (7-1-99)

08. Status of SLMB Group II. *SLMB Group II is extended to at least January 21, 2003, pending action by the U. S. Congress.* (3-20-04)

812. Qualified Individual (QI).

A person meeting all requirements in Subsections 812.01 through 812.07 is eligible for QI. Medicaid pays the Medicare Part B premiums for a QI. The income and resource exclusions and disregards used for AABD are used for QI. (1-1-10)T

01. Other Medicaid. The QI cannot be eligible for any other type of Medicaid. (1-1-10)T

02. Medicare Part A. The QI must be entitled to hospital insurance under Part A of Medicare at the time of his application. (1-1-10)T

03. Nonfinancial Requirements. The QI must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. (1-1-10)T

04. Income. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual FPG revision is published. The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit is up to one hundred thirty-five percent (135%) of the FPG. (1-1-10)T

05. Resource Limit. Resources must not exceed the resource standard applied to the full low-income subsidy defined in 42 USC 1395-114 of the Social Security Act. The resource exclusions used for AABD are used for SLMB. (1-1-10)T

06. Coverage Limits. There is an annual limit on participants served, based on availability of federal funds. New applications are denied when the annual limit is reached. (1-1-10)T

07. Effective Dates. QI coverage begins on the first day of the application month. QI coverage may be backdated up to three (3) calendar months before the application month. (1-1-10)T

8123. QUALIFIED DISABLED AND WORKING INDIVIDUAL (QDWI).

A person meeting all requirements in Subsections 812.01 through 812.05 of these rules is eligible for QDWI. The person must not be eligible for any other type of Medicaid. A QDWI is eligible only for Medicaid payment of his Medicare Part A premium. (3-15-02)

01. Age and Disability. The participant must be a disabled worker under age sixty-five (65). (7-1-99)

02. Nonfinancial Requirements. The participant must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation and SSN. (7-1-99)

03. Section 1818A Medicare. SSA determined the participant meets the conditions of Section 1818A of the Social Security Act. (7-1-99)

04. Income. Monthly income must not exceed two hundred percent (200%) of the one (1) person official poverty line defined by the OMB. (7-1-99)

05. Resources Limit. ~~The resource limit is four thousand dollars (\$4,000)~~ Resources must not exceed the resource standard applied to the full low-income subsidy defined in 42 USC 1395-114 of the Social Security Act. The resource exclusions used for AABD are used for QDWI. ~~(7-1-99)~~(1-1-10)T

8134. SPONSORED LEGAL NON-CITIZEN.

All income and resources of a legal non-citizen's sponsor are deemed for Medicaid eligibility if the sponsor has signed an I-864 affidavit of support. (7-1-99)

8145. CHILD SUBJECT TO DEEMING.

Income and resources of a child's stepparent are not deemed to the child in determining his Medicaid eligibility. (7-1-99)

8156. FUGITIVE FELON OR PROBATION OR PAROLE VIOLATOR.

A person denied SSI or AABD cash because of the prohibition against payment to fugitive felons and probation and parole violators is not disqualified from Medicaid. (7-1-99)

8167. -- 830. (RESERVED).