

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

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

16.03.01 - Eligibility for Health Care Assistance for Families & Children

(Docket #16-0301-0901);

16.03.06 - Refugee Medical Assistance (Docket #16-0306-0901).

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 7-14-09. 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 8-11-09.

_____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: June 22, 2009

SUBJECT: Department of Health and Welfare:
* IDAPA 16.03.01 – Eligibility for Health Care Assistance for Families and Children (Docket No. 16-0301-0901) (Temporary and Proposed); and
IDAPA 16.03.06 – Refugee Medical Assistance (Docket No. 16-0306-0901) (Temporary and Proposed),

The Department of Health and Welfare submits temporary and proposed rule Docket Nos. 16-0301-0901 (Eligibility for Health Care Assistance for Families and Children); 16-0304-0802 (Rules Governing the Food Stamp Program in Idaho); and 16-0306-0901 (Refugee Medical Assistance), hereafter collectively, “temporary and proposed rules”. Both rulemaking dockets share the common element of compliance with the “Afghan Allies Protection Act of 2009, P.L. 111-8, Sections 601 and 602. In addition, both rulemaking dockets are said to confer a benefit.

According to the Department, the temporary and proposed rules extend Afghani special immigration benefits from six to eight months, effective March 11th. In addition, Docket no. 16-0301-0901 permits a “deemed newborn” to be Medicaid eligible for the first year of life regardless of the mother’s eligibility or whether the child is living with the mother, aligns citizenship and identification documentation requirements with federal regulations for “deemed newborns” and tribal members and complies with federal law regarding excluded income. These temporary rule components went into effect on April 1st. Docket No. 16-0301-0901 also is said to delete the reporting requirements and income test from Transitional Medicaid, effective July 1st.

According to the Department, the temporary and proposed rules are authorized pursuant to sections 56-202 and 56-203, Idaho Code, and by the Afghan Allies Protection Act of 2009, Public law 111-8, Section 601 and 602. Section 56-202(b), Idaho Code, provides the

Department with general and broad rulemaking authority under Idaho's public assistance law. Section 56-203(b), Idaho Code, 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), Idaho Code, 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. Section 602(a)(8) of the Afghan Allies Protection Act of 2009, 123 STAT. 809, provides for resettlement support and other benefits for a citizen or national of Afghanistan who is granted special immigrant status as prescribed by federal law.

Docket No. 16-0306-0901 is also said to be authorized by 8 U.S.C. section 1521, Action Transmittal ORR-AT-80-6, and 45 CFR Parts 400 and 401. Eight U.S.C. section 1521 establishes the Office of Refugee Resettlement in the Department of Health and Human Services and provides no support for this rulemaking docket. 45 CFR Part 400 regulates state compliance with the refugee resettlement program under the Immigration and Nationality Act, while Part 401 deals with the Cuban/Haitian Entrant Program and is not applicable to this rulemaking docket. Action Transmittal ORR-AT-80-6 could not be located. The Department has failed to provide copies of these specific federal laws and regulations upon which the proposed rulemaking is based as required by section 67-5223(1), Idaho Code.

Docket No. 16-0301-0901 is also said to be authorized by sections 56-209, 56-236 through 240, 56-242, 56-250, 56-253, 56-255 and 56-257, Idaho Code, H.R.1, American Recovery and Reinvestment Act of 2009, and the Children's Health Insurance Program Reauthorization Act of 2009, sections 113 and 221.

Section 56-209, Idaho Code, authorizes the Department's Director to promulgate rules establishing assistance programs for eligible families, define eligibility and other requirements of participation and establish time limitations in conformity with federal law and regulation. Sections 56-236 through 56-242, Idaho Code, comprise the Idaho Health Insurance Access Card Act. Section 56-239 of the Act requires the Department's Director to implement the CHIP Plan B program by adopting rules recommended by the Board of the Idaho High Risk Reinsurance Pool, section 56-240 requires the Director to implement the Children's Access Card Program by adopting rules recommended by that Board and section 56-242 requires the Director to develop an Idaho Health Insurance Access Card Program to implement the Children's Access Card Program and the Small Business Health Insurance Pilot Program and promulgate rules, as recommended by that Board, to implement these programs. Sections 56-250 through 56-255, Idaho Code, comprise the Idaho Medicaid Simplification Act. Section 56-253 of that Act provides broad powers and duties to the Director regarding the Medicaid program. Section 56-257 of that Act requires the Department to establish enforceable cost sharing in order to increase the awareness and responsibilities of Medicaid participants for the cost of their health care and to encourage use of cost-effective care in the most appropriate setting.

The Department does not state what provisions in H.R.1, American Recovery and Reinvestment Act of 2009, it relies upon as authority. The Children's Health Insurance Program Reauthorization Act of 2009 is found at H.R.2. Section 113(b)(1) of that Act amends Medicaid

to eliminate the requirement that a newborn be a member of the woman's household and the woman remains (or would remain if pregnant) eligible for assistance. There is no section 221 to that Act. Section 211 of that Act deals with verification of declaration of citizenship or nationality for purposes of eligibility for Medicaid and CHIP. Section 211(b)(1) provides authority for acceptance of documentary evidence issued by a federally recognized Indian Tribe and section 211(b)(3) clarifies the documentation required for children born in the United States to Mothers eligible for Medicaid. Once again the Department has failed to provide a copy of the specific federal law upon which this proposed rulemaking is based as required by section 67-5223(1), Idaho Code.

According to the Department, no fees or charges are imposed by the temporary and proposed rules. The Department states that Docket No. 16-0301-0901, dealing with eligibility for health care assistance for families and children, has an anticipated fiscal impact of \$891,200, of which \$185,700 would be from the state general fund and that Docket No. 16-0306-0901, dealing with refugee medical assistance, has no general fund impact since the program is 100% federally funded, has a low number of participants and the two months of extended eligibility will have minimal impact on federal funds.

According to the Department, negotiated rulemaking was not conducted because the rulemaking is being made to comply 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 July 15, 2009. All written comments must be delivered to the Department on or before July 22, 2009.

ANALYSIS

1. Afghan Special Immigrant

Both temporary and proposed rules describe an Afghan special immigrant as one who is eligible for eight, rather than six, months of assistance under the respective rules. Docket no. 16-0301-0901 at sections 220.13 and 525.02.c; Docket No. 16-0306-0901 at section 100.02. These changes are consistent with Afghan Allies Protection Act of 2009, section 602(a)(8).

2. Additional Docket No. 16-0301-0901 Amendments

Docket No. 16-0301-0901 is being further amended to permit a document issued by a federally recognized Indian tribe proving membership, enrollment in or affiliation with such a tribe to be accepted as the primary level of proof of U.S. citizenship and identity. Section 222.01. Presumably because of the primary level of proof established by a tribal issued document, other sections are amended to eliminate certain records as providing lower levels of U.S. citizenship proof. See sections 222.04.b, 222.05. This change is consistent with Children's Health Insurance Program Reauthorization Act of 2009, section 211(b)(1).

Docket No. 16-0301-0901 provides that individuals deemed eligible for Medicaid as a

waived newborn meets the U.S. citizenship and identity requirements and are not required to provide documentation of citizenship and identity. Section 225.05. This change is consistent with Children's Health Insurance Program Reauthorization Act of 2009, section 211(b)(3). This temporary and proposed rule also eliminates the 133% of Department of Health and Human Service federal poverty guidelines (FPG) limit for the mother of such a newborn. The mother of such a newborn only need to files a application for medical assistance and be eligible for Medicaid in the newborn's birth month for the newborn to be eligible. Section 530.02. Perhaps the basis for this change is in the American Recovery and Reinvestment Act of 2009, but no specific provision of that Act is cited by the Department.

The temporary and proposed rule in docket no. 16-0301-0901 eliminates an enumeration of some 24 types of income that are excluded under federal law in qualifying for health care assistance, section 385; a transitional Medicaid reporting requirement (three quarterly reports) to retain eligibility for months seven through twelve, deleted section 423; and an income tested for transitional Medicaid (not exceeding 185% of FPG and a "good cause for lack of earnings"), deleted section 424. Perhaps the basis for these changes is in the American Recovery and Reinvestment Act of 2009, but, once again, no specific provision of that Act is cited by the Department.

SUMMARY

The Department's temporary and proposed rule changes appear to be authorized under sections 56-202(b), 56-203(b) and (g), Idaho Code. However, the specific provisions of the American Recovery and Reinvestment Act of 2009 upon which it relies need to be cited by the Department in support of this rulemaking.

cc: Department of Health and Welfare
Tamara Prisock & Kathy McGill

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rule are March 11, 2009, April 1, 2009, and July 1, 2009.

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 Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code; and Public Law 111-8, Sections 601 and 602, "Afghan Allies Protection Act of 2009"; H.R.1, "American Recovery and Reinvestment Act of 2009"; and "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009," Sections 113 (deemed newborn definition) and 221 (citizenship documentation for deemed newborns and tribal members).

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 15, 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:

This rulemaking is being proposed due to several changes in federal requirements. The changes in federal statute create the following changes to the Department's rules dealing with eligibility for services:

1. Extend the Afghani special immigrant benefits to eight months. (Effective March 11, 2009)
2. Amend deemed newborn (a newborn child deemed eligible for Medicaid for the first year of his life) to remain eligible regardless of mother's eligibility or whether living with birth mother. (Effective April 1, 2009)
3. Align citizenship and identification documentation requirements with federal regulations for deemed newborns, tribal members. (Effective April 1, 2009)
4. Exclude income as required and defined in federal law. (Effective July 1, 2009).
5. Delete the reporting requirements and income test from Transitional Medicaid. (Effective July 1, 2009).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rulemaking is necessary to meet deadlines in federal regulation and confers a benefit to participants receiving Medicaid.

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: NA

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

The total estimated impact of this rulemaking is \$891,200, of which \$185,700 would be from the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 67-5220, negotiated rulemaking was not conducted because this rule is being written to comply with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy McGill at (208) 334-4934.

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 22, 2009.

DATED this 29th day of May, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0301-0901

220. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible, an individual must be a member of one (1) of the following groups: (3-30-07)

01. U.S. Citizen. A U.S. Citizen; (3-30-07)

02. U.S. National, National of American Samoa or Swain's Island. A U. S. national, or a national of American Samoa or Swain's Island. (3-30-07)

03. Child Born Outside the U.S. A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)

a. At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)

b. The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)

c. The child is under eighteen (18) years of age; (3-30-07)

d. The child is a lawful permanent resident; and (3-30-07)

e. If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)

04. Full-Time Active Duty U.S. Armed Forces Member. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; (3-30-07)

05. Veteran of the U.S. Armed Forces. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who were honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy, or U.S. Coast

Guard for a reason other than their citizenship status, or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; (3-30-07)

06. Non-Citizen Entering the U.S. Before August 22, 1996. A non-citizen who entered the U.S. before August 22, 1996, who is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c), who remained continuously present in the U.S. until he became a qualified non-citizen; (3-30-07)

07. Non-Citizen Entering On or After August 22, 1996. A non-citizen who entered the U.S. on or after August 22, 1996, and who is: (3-30-07)

a. A refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)

b. An asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)

c. An individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

d. An Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-30-07)

e. A Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act under Section 501(e) of P.L. 96-422 (1980), and can be eligible for seven (7) years from their date of entry; (3-30-07)

08. Qualified Non-Citizen Entering On or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), who entered the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years; (3-30-07)

09. American Indian Born in Canada. An American Indian born in Canada, under 8 U.S.C. 1359; (3-30-07)

10. American Indian Born Outside the U.S. An American Indian born outside of the U.S., who is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); (3-30-07)

11. Qualified Non-Citizen Child Receiving Federal Foster Care. A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; and (3-30-07)

12. Victim of Severe Form of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-30-07)

a. Is under the age of eighteen (18) years; or (3-30-07)

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-30-07)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-30-07)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

13. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, is eligible for ~~six~~ eight (68) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(5-8-09)~~ (3-11-09)T

14. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

222. LEVELS OF CITIZENSHIP DOCUMENTATION.

01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity. The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a.** A U.S. passport; (3-30-07)
- b.** A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
- c.** A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)

d. A document issued by a federally-recognized Indian tribe proving membership, enrollment in, or affiliation with such tribe. (4-1-09)T

02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 222.01 is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

- a.** A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
 - i.** United States fifty (50) states; (3-30-07)
 - ii.** District of Columbia; (3-30-07)
 - iii.** Puerto Rico, on or after January 13, 1941; (3-30-07)
 - iv.** Guam, on or after April 10, 1899; (3-30-07)
 - v.** U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
 - vi.** America Samoa; (3-30-07)
 - vii.** Swain's Island; or (3-30-07)
 - viii.** Northern Mariana Islands, after November 4, 1986. (3-30-07)
- b.** A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
- c.** A report of birth abroad of a U.S. Citizen, Form FS 240; (3-30-07)
- d.** A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e.** A Northern Mariana Identification Card, Form I-873; (3-30-07)
- f.** An American Indian Card issued by the Department of Homeland Security with the classification code "KIC," Form I-873; (3-30-07)

- g.** A final adoption decree showing the child's name and U.S. place of birth; (3-30-07)
- h.** Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
- i.** An official U.S. Military record showing a U.S. place of birth; (4-2-08)
- j.** Certification of birth abroad, Form FS-545; (4-2-08)
- k.** Verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; or (4-2-08)
- l.** Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (4-2-08)

03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

- a.** A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; or (3-30-07)
- b.** Life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth. (3-30-07)
- c.** Religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing whether the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization. (4-2-08)

04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 105.01 through 105.03 of these rules do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

- a.** Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)
- b.** One (1) of the following documents that shows a U.S. place of birth for participants sixteen (16) years of age or older and was created at least five (5) years before the application for Medicaid. For children under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)
 - ~~i.~~ ~~Seneca Indian tribal census record;~~ (~~3-30-07~~)
 - ~~ii.~~ Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
 - ~~iii.~~ U.S. State vital Statistics official notification of birth registration; (3-30-07)
 - ~~iv.~~ A delayed U.S. public birth record that is recorded more than five (5) years after the person's birth; (4-2-08)
 - ~~v.~~ Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
 - ~~vi.~~ Medical (clinic, doctor, or hospital) record; (3-30-07)
 - ~~vii.~~ Institutional admission papers from a nursing facility, skilled care facility or other institution; or

(3-30-07)

viii. Bureau of Indian Affairs roll of Alaska Natives. (4-2-08)

c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: (4-2-08)

i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)

ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)

iii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; and (3-30-07)

iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

05. Documents Accepted for Proof of Identity but Not Citizenship. The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsections 222.01 through 222.04 of this rule to establish both citizenship and identity. (3-30-07)

a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)

b. A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 222.05.a of this rule; (3-30-07)

c. School identification card with a photograph of the individual; (3-30-07)

d. U.S. Military card or draft record; (3-30-07)

e. Military dependent's identification card; (3-30-07)

f. U. S. Coast Guard Merchant Mariner card; or ~~(3-30-07)~~ (4-1-09)T

~~g. Certificate of Degree of Indian blood; or~~ ~~(3-30-07)~~

~~h. Native American Indian or Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual.~~ ~~(3-30-07)~~

~~ig.~~ Identity affidavits are acceptable proof of identity for individuals living in a residential care facility. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

225. INDIVIDUALS CONSIDERED AS MEETING THE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

The individuals listed in Subsections 225.01 through 225.05 of this rule meet the U.S. citizenship and identity requirements and are not required to provide documentation of citizenship and identity. (4-2-08)

01. Supplemental Security Income (SSI) Recipients. (4-2-08)

02. Social Security Disability Income (SSDI) Recipients. (4-2-08)
03. Individuals Determined by SSA to be Entitled to Receive Medicare. (4-2-08)
04. Adoptive or Foster Care Children Receiving Assistance Under Title IV-B or Title IV-E of the Social Security Act. (4-2-08)
- Rules. 05. Individuals Deemed Eligible for Medicaid as a Waived Newborn Under Section 530 of these Rules. (4-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

385. INCOME EXCLUDED BY FEDERAL LAW.

Income excluded by federal law is not counted in determining income available to the participant. *The following kinds of income are excluded by federal law:* (3-30-07)(7-1-09)T

- Fund.* 01. ~~Agent Orange Settlement Funds.~~ *Payments made to veterans from the Agent Orange Settlement Fund.* (3-30-07)
02. ~~Alaska Native Claims.~~ *Tax-exempt portions of payments made in accordance with the Alaska Native Claims Settlement Act, PL 92-203.* (3-30-07)
03. ~~AmeriCorps.~~ *AmeriCorps payments for child care allowances and educational awards, other than stipends or living allowances, are excluded.* (3-30-07)
04. ~~Child Nutrition Benefits.~~ *The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the food service program for children under the National School Fund Act, as amended, (PL 92-433 and PL 93-150). These are the WIC program and school lunch program.* (3-30-07)
05. ~~Commodities and Food Stamps.~~ *The value of U.S. Department of Agriculture donated commodities and Food Stamps.* (3-30-07)
06. ~~Disaster Relief.~~ *Assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President declared disaster and comparable disaster assistance provided by states, local government and disaster assistance organizations.* (3-30-07)
07. ~~Elderly Nutritional Benefits.~~ *Any benefits received under Title VII, Nutritional Program for the Elderly, of the Older Americans Act of 1965.* (3-30-07)
08. ~~Foster Care and Adoption Assistance Payment.~~ *Foster care payments paid by the Department are excluded. Adoption Assistance payments paid by federal, state or local agencies are excluded.* (3-30-07)
09. ~~Garnishments.~~ *Income garnished by court order is not available and is excluded.* (3-30-07)
10. ~~Home Energy Assistance.~~ *PL 100-203 excludes Home Energy Assistance. The aid must be provided based on need certified by the Department.* (3-30-07)
11. ~~Home Produce.~~ *The value of home produce used by the family.* (3-30-07)
12. ~~Housing Subsidies.~~ *The value of government rent or housing subsidies or both, if the participant receives both.* (3-30-07)
13. ~~HUD Family Self-Sufficiency Escrow Account.~~ *Interest earned on an escrow account established*

by HUD for families participating in the Family Self-Sufficiency Program established by Section 544 of the National Affordable Housing Act. (3-30-07)

~~14. **Income Tax Refunds and Earned Income Tax Credit (EITC) Payments.** Income tax refunds are excluded from income, but counted as a resource. Earned Income Tax Credit payments, or the advance payment of the EITC, is excluded.~~ (3-30-07)

~~15. **Indian Payments.** Payments distributed to or held in trust for members of any Indian tribe issued under PL 92-254, PL 93-134, or PL 94-540. Payments distributed to certain Indian tribes, including the Shoshone Bannock Tribe of Fort Hall, Idaho, referenced under Section 5 of PL 94-114, effective October 10, 1975. Per capita judgment funds paid to members of the Blackfoot Tribe of the Blackfoot Indian Reservation, Montana and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana. Per capita funds held in trust by the Secretary of the Interior for tribal members paid under PL 98-64. Effective January 1, 1994, up to two thousand dollars (\$2,000) of payments derived from interests of individual Indians in trust or restricted lands are excluded by Section 8 of the PL 93-134 as amended by PL 103-66.~~ (3-30-07)

~~16. **Loans.** A bona fide loan is not available income.~~ (3-30-07)

~~17. **Low Income Energy Assistance.** Money paid to families under the Low Income Energy Assistance Act of 1981 under 42 U.S.C. 8624(f) is excluded.~~ (3-30-07)

~~18. **Radiation Exposure Compensation Act.** Payments made to individuals under this act are excluded.~~ (3-30-07)

~~19. **Relocation Assistance.** Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, contained in 42 U.S.C. Subsection 4636 of the U.S. Code, and relocation payments paid to civilians of World War II per Public Law 100-383.~~ (3-30-07)

~~20. **SSI Income or AABD Income.** Income and resources of a person who has been determined eligible for, or is receiving SSI or AABD, is excluded.~~ (3-30-07)

~~21. **Senior Volunteer Programs.** Payments for supportive services or out of pocket expenses made to individual volunteers serving as foster grandparents, Vista volunteers, senior health aids, or senior companions and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title II and Title III of the Domestic Volunteer Service Act of 1973, Section 418, PL 93-113, and 93-143. This Federal Code is contained in Titles 5 and 42 of the U.S. Code.~~ (3-30-07)

~~22. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans.~~ (3-30-07)

~~23. **Third Party Deposits to a Checking Account.** Third party deposits to a participant's checking account are excluded if the deposit is solely for the use of the third party and the participant receives no benefit from the deposit.~~ (3-30-07)

~~24. **Utility Reimbursement Payments.** Utility reimbursement payments made to persons living in housing subsidized by HUD.~~ (3-30-07)

~~25. **Work Related Payments.** Payments made by an employer for work related expenses are excluded. Work related expenses include travel and per diem.~~ (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

422. ~~-- 424.~~ (RESERVED).

423. ~~TRANSITIONAL MEDICAID REPORTING REQUIREMENT.~~

~~To continue to receive Transitional Medicaid for months seven (7) through twelve (12), the family must complete and return three (3) quarterly reports. Each report must include the family gross earnings, expenses for dependent care needed for employment, and any change to the family composition. Proof of monthly earnings and dependent care expenses must be provided with each report.~~ (5-8-09)

424. INCOME TESTS FOR TRANSITIONAL MEDICAID.

~~01. **Income Test.** The family's reported earnings, less dependant care expenses necessary for employment, must not exceed one hundred and eighty five percent (185%) of the FPG for the family size.~~ (5-8-09)

~~02. **Good Cause for Lack of Earnings.** Good cause for lack of earnings includes, but is not limited to:~~ (4-2-08)

~~a. Family crisis.~~ (4-2-08)

~~b. Court required appearance or incarceration.~~ (4-2-08)

~~c. Loss of transportation where no other means of transportation is readily accessible.~~ (4-2-08)

~~d. Loss of child care arrangements.~~ (4-2-08)

~~e. Involuntary loss of employment.~~ (4-2-08)

~~f. Illness.~~ (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

525. CONTINUOUS HEALTH CARE ASSISTANCE ELIGIBILITY FOR CHILDREN UNDER AGE NINETEEN.

Children under age nineteen (19), who are found eligible in an initial determination or a renewal, remain eligible for a period of twelve (12) months. The twelve (12) month continuous eligibility period does not apply if, for any reason, eligibility was determined incorrectly. (3-30-07)

01. Reasons Continuous Eligibility Ends. Continuous eligibility for children stops for one (1) of the following reasons: (3-30-07)

a. The child is no longer an Idaho resident; or (3-30-07)

b. The child dies; or (3-30-07)

c. The participant requests closure; or (3-30-07)

d. The child turns nineteen (19) years of age as defined in Subsection 010.05 of these rules. (3-30-07)

02. Children Not Eligible for Continuous Eligibility. Children are not eligible for continuous eligibility for one (1) of the following reasons: (3-30-07)

a. A child is approved for emergency medical services; (5-8-09)

b. A child is approved for pregnancy-related services; (5-8-09)

c. A child is an Afghan special immigrant and is approved for ~~six~~ eight (68) months; or
(5-8-09)(3-11-09-)T

- d. A child is an Iraqi special immigrant and is approved for eight (8) months. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

530. NEWBORN CHILD DEEMED ELIGIBLE FOR MEDICAID.

A child is deemed eligible for Medicaid for his first year of life if: (4-2-08)

01. Mother Filing an Application. The child is born to a mother who files an application for medical assistance, and (4-2-08)

02. Mother Is Eligible for Medicaid. The mother is ~~at or below one hundred thirty three (133%) FPG~~ and is eligible for Medicaid in the newborn's birth month. This includes a mother ~~with income at or below one hundred thirty three (133%) of poverty~~ who qualifies for coverage ~~of~~ only for the delivery because of her alien status. (4-2-08)(4-1-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.06 - REFUGEE MEDICAL ASSISTANCE

DOCKET NO. 16-0306-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 11, 2009.

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 Sections 56-202 and 56-203, Idaho Code, 45 CFR Parts 400 and 401, Section 412E, Title IV, Public Law 96-212 also known as the "Refugee Act of 1980," 94 Stat. 114 (8 USC 1521) and Action Transmittal ORR-AT-80-6, and Public Law 111-8, Sections 601 and 602, "Afghan Allies Protection Act of 2009."

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, July 15, 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:

Afghani special immigrant benefits need to be extended from six months to eight months to bring them into alignment with recent changes in federal law (P.L. 111-8, Sections 601 and 602).

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b and c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate both to comply with deadlines in amendments to governing law or federal programs, and to confer a benefit.

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

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

There is no impact to the state general fund as a result of this rulemaking. This program is 100% federally funded, and due to the low number of participants, the additional two months of eligibility is expected to have minimal impact on federal funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to align with changes in federal statute made under the "Afghan Allies Protection Act of 2009."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy McGill at (208) 334-4934.

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 Wednesday, July 22, 2009.

DATED this 29th day of May, 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. 16-0306-0901

100. IDENTIFICATION OF REFUGEES.

01. Refugee Immigration Status. A person has refugee status for purposes of assistance under the Refugee Medical Assistance Program if he is one (1) of the following: (4-2-08)

a. A person from Cambodia, Laos, or Vietnam who has a Form I-94 indicating that the person has been paroled under Section 212(d)(5) of the Immigration and Nationality Act (INA). The I-94 must clearly indicate that the person has been paroled as a refugee or asylee. (4-2-08)

b. A person from Cuba who is present in the United States, and who has an I-94 indicating that the person has been paroled under Section 212(d)(5) of the INA. The I-94 must clearly indicate that the person has been paroled as a refugee or asylee. (4-2-08)

c. A person from any country who has Form I-94 indicating that the person has been: (4-2-08)

i. Paroled under Section 212(d)(5) of the INA as a refugee or asylee; or (4-2-08)

ii. Admitted as a conditional entrant under Section 203(a)(7) of the INA; or (4-2-08)

iii. Admitted as a refugee under Section 207 of INA; or (4-2-08)

iv. Granted asylum under Section 208 of INA; or (4-2-08)

d. A person who entered the United States and has Form I-151 or I-551 showing that his status has been subsequently adjusted from one (1) of the statuses in Subsection 100.02.c. of this rule to that of permanent resident alien, provided he can document his previous status. (4-2-08)

e. A child born in the United States to eligible refugee parent(s) with whom he lives. (4-2-08)

f. An Amerasian together with close family members who entered the United States beginning March 20, 1988, in immigrant status through the Orderly Departure Program. Close family members who are eligible refugees under this provision are limited to: (4-2-08)

i. The Amerasian's spouse and child(ren); (4-2-08)

ii. The mother of an unmarried Amerasian and such mother's spouse and child(ren); and (4-2-08)

iii. A person who has acted as the parent of an unmarried Amerasian and that person's spouse and child(ren). (4-2-08)

02. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, is eligible for ~~six~~ eight (68) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(5-8-09)~~ (3-11-09)T

03. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)

04. Other Factors in Determining Eligibility for the Refugee Medical Assistance Program. (4-2-08)

a. An applicant who has applied for, but has not been granted asylum, is not eligible. (4-2-08)

- b.** A person who entered the United States as a resident alien is not eligible. (4-2-08)
- c.** A Form I-94 which shows a person has been paroled into the United States under Section 212(d)(5) of the INA must clearly indicate that the person has been paroled as a “Refugee” or “Asylee” if such form was issued: (4-2-08)

 - i.** To a person from Cambodia, Laos, or Vietnam before October 1, 1997, in accordance with P.L. 106-429, Section 101(a), as amended by P.L. 108-447; or (4-2-08)
 - ii.** To a person from Cuba; or (4-2-08)
 - iii.** To a person from any other country at any time. (4-2-08)
- d.** A person whose status is Cuban/Haitian Entrant must have his eligibility for benefits under the Refugee Medical Assistance Program determined under Sections 125 and 200 of these rules. (4-2-08)
- e.** An Amerasian or close family member admitted as an immigrant but eligible for Refugee Medical Assistance as though he were a refugee must have either of the following documents verifying his status: (4-2-08)

 - i.** A temporary identification document, Form I-94 stamped “Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until (expiration date). Employment authorized.” The back of Form I-94 contains the stamped word “Admitted” and is coded AM1, AM2, or AM3; or (4-2-08)
 - ii.** A permanent identification document, Form I-551 coded AM6, AM7, or AM8. (4-2-08)