

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 16.03.10 - Medicaid Enhanced Plan Benefits (Docket #16-0310-0902).

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 4-23-09. 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 5-21-09.

_____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: April 4, 2009

SUBJECT: Department of Health and Welfare - IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits (Docket No. 16-0310-0902) (Temporary and Proposed)

This temporary and proposed rule docket 16-0310-0902 (hereinafter “proposed rule”) represents the Department of Health and Welfare’s amendments to chapter 16.03.10 dealing with Medicaid enhanced plan benefits. The Governor’s justification for the temporary rule is said to be Executive Order 2008-3, which instructed that the General Fund spending authority on file in the Office of the State Controller be reduced for all departments, offices and institutions of the state by one percent (1%) of their Fiscal Year 2009 General Fund Appropriation. This temporary rule justification does not neatly fit any of the justifications stated in section 67-5226(1), Idaho Code: protection of the public health, safety or welfare; compliance with deadlines in amendments to governing law or federal programs; or conferring a benefit. The temporary rule was effective on January 1, 2009.

This docket was approved as a temporary rule during the 2009 Legislative session. Legislative review as a pending rule will take place during the 2010 Legislative session.

The Department states that in order to comply with Executive Order 2008-3, Medicaid service benefits were reviewed and a reduction to the maximum amount of service hours under his rule has been made for developmental disability agencies services.

According to the Department, the proposed rule is authorized pursuant to sections 56-202(b), 56-203, 56-250 through 56-257 and 56-1003, Idaho Code.

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority. 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 participation in medical assistance payments. Section 56-203(i), Idaho Code, empowers the

Department to determine the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals.

Sections 56-250 through 56-255, Idaho Code, are the codified provisions of the Idaho Medicaid Simplification Act (HB 776 (2006)). Part of the legislative intent of that Act is to strive to balance efforts to contain Medicaid costs, improve program quality and improve access to services. Section 56-251(1), Idaho Code. Section 56-253(8), Idaho Code, gives the Department's director the authority to promulgate rules consistent with that Act. Sections 56-256 and 56-257, Idaho Code, deal with Personal Health Accounts and Co-payments, respectively, and are not relevant to the present proposed rule.

Section 56-1003, Idaho Code, specifies the powers and duties of the Department's director. Subsection (3) of that section grants the director authority to adopt rules regarding the general supervision of the promotion and protection of the life, health and mental health of the people of this state.

According to the Department, no fee or charge is imposed by the proposed rule. The Department states that the developmental disabilities service cap reduction to 22 hours equals \$1,082,500 in savings. According to the Department, negotiated rulemaking was not conducted because the changes were in response to Executive Order 2008-3.

Public hearings were scheduled in Lewiston on January 12, in Boise on January 13, and in Idaho Falls on January 14. All written comments were to be directed and delivered to the Department's specified representative on or before January 28, 2009.

ANALYSIS

The sole change in the proposed rule is a reduction in developmental disabilities agency therapy services from a maximum of 30 hours per week to 22 hours per week. IDAPA 16.03.10.653.05.a.

SUMMARY

The Department's proposed rule appears to be authorized under sections 56-202(b), 56-203(b) and 56-253(8), Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock & Dave Simnitt

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0902

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is January 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(b), 56-203, 56-250 through 257, and 56-1003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Hearing in Region 2: Monday, January 12, 2009	Hearing in Region 4: Tuesday, January 13, 2009	Hearing in Region 7: Wednesday, January 14, 2009
6:00 p.m. PST State Office Building 1118 F Street 3rd Floor Conference Room Lewiston, ID	6:00 p.m. MST DHW Region IV Office 1720 Westgate Dr., Suite D Room 119 Boise, ID	6:00 p.m. MST State Office Building 150 Shoup Avenue 2nd Floor Conference Room Idaho Falls, ID

The hearing site 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:

The rule change in this rulemaking is in response to the Governor's Executive Order No. 2008-03, Reduction of General Fund Spending Authority, that directed state agencies to hold back 1% of their general fund budget in the current 2009 fiscal year. In order to comply with this order, Medicaid service benefits were reviewed and the following change is being made to meet the Governor's Order. This change reflects a reduction to the maximum amount of service hours under the Medicaid Enhanced Plan Benefits chapter of rule for Developmental Disability Agencies services.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of this rule is appropriate because of his Executive Order No. 2008-3.

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.

To meet the Governor's Executive Order to hold back 1% of the 2009 fiscal year budget, the following amount includes both state and federal funds to help meet that savings for the 2009 Medicaid budget. The state general fund share of the savings listed is approximately 30%.

Developmental Disabilities (DD) service cap reduction to 22 hours equals \$1,082,500 savings.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes were required to meet the Governor's Executive Order No. 2008-3.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this temporary and proposed rule, contact Dave Simmitt at (208) 364-1992.

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 January 28, 2009.

DATED this 17th day of November, 2008.

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 TEXT OF DOCKET 16-0310-0902

653. DDA SERVICES - COVERAGE REQUIREMENTS AND LIMITATIONS.

01. Requirement for Plan of Service and Prior Authorization. (3-19-07)

a. All therapy services for children must be identified on the Individual Program Plan developed by the developmental disabilities agency (DDA) as described in IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

b. All therapy services for adults with developmental disabilities and ISSH waiver participants must be identified on the plan of service and prior authorized as described in Sections 507 through 520 of these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

02. Assessment and Diagnostic Services. Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation or diagnostic services provided in any calendar year. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies": (3-19-07)

a. Comprehensive Developmental Assessment; (3-19-07)

b. Comprehensive Intensive Behavioral Intervention (IBI) Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty-six (36) month IBI limitation but does not count against the twelve (12) hour limitation described in this subsection; (3-19-07)

c. Occupational Therapy Assessment; (3-19-07)

d. Physical Therapy Assessment; (3-19-07)

e. Speech and Language Assessment; (3-19-07)

f. Medical/Social History; and (3-19-07)

g. Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview.

(3-19-07)

03. Therapy Services. Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in IDAPA 16.04.11, "Developmental Disabilities Agencies." The following therapy services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

a. Developmental Therapy. Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. (3-19-07)

b. Psychotherapy Services. Psychotherapy services, alone or in combination with supportive counseling, are limited to a maximum of forty-five (45) hours in a calendar year, and include: (3-19-07)

i. Individual psychotherapy; (3-19-07)

ii. Group psychotherapy; and (3-19-07)

iii. Family-centered psychotherapy which must include the participant and one (1) other family member at any given time. (3-19-07)

c. Supportive Counseling. Supportive counseling must only be delivered on an individualized, one-to-one basis. Supportive counseling, alone or in combination with psychotherapy services, is limited to a maximum of forty-five (45) hours in a calendar year. (3-19-07)

d. Speech-Language Pathology Services. Speech-language pathology services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)

e. Physical Therapy Services. Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)

f. Occupational Therapy Services. Occupational therapy services include individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)

g. Intensive Behavioral Intervention (IBI). IBI is limited to a lifetime limit of thirty six (36) months. (3-19-07)

i. The DDA must receive prior authorization from the Department prior to delivering IBI services. (3-19-07)

ii. IBI must only be delivered on an individualized, one-to-one basis. (3-19-07)

h. Intensive Behavioral Intervention (IBI) Consultation. IBI consultation is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. (3-19-07)

i. Collateral Contact. Collateral contact is consultation or treatment direction about the participant to a significant other in the participant's life and may be conducted face-to-face or by telephone contact. Collateral contact for general staff training, regularly scheduled parent-teacher conferences, general parent education, or for treatment team meetings, even when the parent is present, is not reimbursable. (3-19-07)

j. Pharmacological Management. Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other

practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. (3-19-07)

- 04. Excluded Services.** The following services are excluded for Medicaid payments: (3-19-07)
- a.** Vocational services; (3-19-07)
 - b.** Educational services; and (3-19-07)
 - c.** Recreational services. (3-19-07)

05. Limitations on DDA Services. Therapy services may not exceed the limitations as specified below. (3-19-07)

a. The combination of therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules must not exceed ~~thirty~~ twenty-two (22) hours per week. (~~3-19-07~~)(1-1-09)T

b. Therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules provided in combination with Community Supported Employment services under Subsection 703.04 of these rules must not exceed forty (40) hours per week. (3-19-07)

c. When a HCBS waiver participant under Sections 700 through 719 of these rules receives Adult Day Care as provided in Subsection 703.12 of these rules, the combination of Adult Day Care, Developmental Therapy and Occupational therapy must not exceed thirty (30) hours per week. (3-19-07)

d. Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the participant is being transported to and from the agency. (3-19-07)

e. Prior to delivering any services in a school-based setting, the DDA must have a contract with the school or the Infant Toddler program. The DDA must not bill Medicaid or the Medicaid participant for these contracted services. Only the school district, charter school, or the Idaho Infant Toddler program may bill Medicaid for these contracted services when provided in accordance with IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 850 through 856. (3-19-07)