

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 16.06.01 - Family and Children's Services (Docket No. 16-0601-0901);

16.07.37 - Children's Mental Health Services (Docket No. 16-0737-0901).

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
9-15-09. 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 10-13-09.

_____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: August 25, 2009

SUBJECT: Department of Health and Welfare - IDAPA 16.06.01 - Family and Children's Services (Docket No. 16-0601-0901 (Proposed)); IDAPA 16.07.37 - Children's Mental Health Services (Docket No. 16-0737-0901 (Proposed))

By these Proposed Rule dockets, the Department of Health and Welfare amends Idaho Administrative Code chapters 16.06.01 (Docket No. 16-0601-0801), dealing with the rules governing family and children's services and 16.07.37 (Docket No. 16-0737-0901) (hereinafter collectively "proposed rules"). Both dockets seek to align rules regarding foster care.

According to the Department, both proposed rule dockets are authorized by sections 56-202(b), 56-204A, 56-803, 56-1003, 56-1004 and 56-1004A, Idaho Code.

Section 56-202(b), Idaho Code, requires the Department's director to promulgate, adopt and enforce such rules and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code, dealing with public assistance and welfare. Section 56-204A, Idaho Code, requires the Department to adopt appropriate rules related to children's services. Section 56-1003, Idaho Code, provides powers and duties to the Department's director in the area of public health; section 56-1004, Idaho Code, provides administrative powers and duties to the Department's director. Section 56-1004A, Idaho Code, adopted in 2005 and amended in 2006, deals specifically with criminal history and background checks. Subsection (1) authorizes the Department to conduct such checks of individuals who provide care or services to vulnerable adults or children and who are identified in rule as being required to have such a check. Subsection (2) describes the information that must or may be contained in such a check. Subsection (3) requires the Department to promulgate rules to further define those individuals who are required to have a background check.

Docket No. 16-0601-0901 is also authorized by sections 16-1629, 16-2102, 39-1209 through 39-1211, 39-5603, 39-7501 and 56-803, Idaho Code, as well as Public Law 110-353,

section 402(1)(B) regarding changes related to international adoptions affecting title IV-E, section 473 of the Social Security Act (adoption and guardianship programs), 42 U.S.C. 673.

Section 16-1629, Idaho Code, is part of the Child Protective Act, and provides the powers and the duties of the Department thereunder, including maintaining a central registry for reporting child neglect, abuse and abandonment information and establishing appropriate administrative procedures for processing complaints of child neglect, abuse and abandonment. Section 16-2102, Idaho Code, is part of the Interstate Compact on the Placement of Children, and provides authority for the Governor to execute a child placement compact with other states.

Chapter 12, title 39, Idaho Code, is the Child Care Licensing Reform Act. Sections 39-1209 through 39-1211, Idaho Code, grant the Idaho board of health and welfare the power to promulgate appropriate rules to implement and enforce listed standards with regard to the licensing of children's agencies, children's residential care facilities, and private foster homes. With regard to private foster homes, section 39-1211, Idaho Code, grants the Department the power to promulgate and enforce rules to assure the safety and adequate physical care of children and to require that foster parents be physically and emotionally suited to care for children and to deal with problems presented by these children.

Section 39-5603, Idaho Code, grants the Department's director the authority to promulgate and adopt appropriate rules necessary to implement and enforce standards for the provision of personal assistance services (i.e., services ordered by a physician or authorized provider that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care or instrumental activities of daily living). Section 39-7501, Idaho Code, enacts into law the interstate compact on adoption and medical assistance. Article IV of that compact addresses adoption assistance; article V addresses medical assistance. Section 56-803, Idaho Code, authorizes the Department to promulgate rules to administer the Hard-to-Place Children Act.

Public Law 110-351, approved October 7, 2008, amended parts Band E of title IV of the Social Security Act. As designated by the Department, section 402(1)(B) of that Public Law amended section 473 of the Social Security Act to add a new paragraph that prohibits payments made to parents with respect to a special needs child who is not a citizen or resident of the United States and who was adopted outside the United States or was brought into the United States for the purpose of being adopted. Payment may be made for an applicable child that is placed in foster care subsequent to the failure of the initial adoption. Section 402(2)(D) of the Public Law added a new paragraph to section 473 of the Social Security Act that provides that a child is not considered to be special needs unless the state determines the child cannot or should not be returned to the parents' home, there exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing

adoption and medical assistance or meets all supplemental security income benefit medical or disability requirements, and a reasonable but unsuccessful effort has been made to the place the child with appropriate adoptive parents without providing adoption or medical assistance. Section 56-203(b) gives the Department the power to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services.

The Department states that Docket No. 16-0737-0901 is also authorized by sections 16-2404, 16-2406, 16-2423, 16-2433 and 56-203B, Idaho Code.

Sections 16-2404, 16-2406, 16-2423 and 16-2433, Idaho Code, are parts of the Children's Mental Health Services Act, and address community services and supports, teens at risk, interagency collaboration, access to services, informed consent of medication or other treatment and the persons subject to involuntary or emergency treatment, and the authority of the Department's director to promulgate rules necessary to the implementation of that Act. Section 56-203B, Idaho Code, provides that payment of public assistance for the benefit of any dependent child creates a debt due or owing to the Department by the parent or responsible party and creates a subrogation interest in the Department.

According to the Department, no fee or charge is imposed, decreased or increased by the proposed rules and there is no impact on the state general fund. The Department states that negotiated rulemaking was not conducted because the purpose of the proposed rules is to align the respective IDAPA chapters with each other and with changes to federal statute. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than September 16, 2009. The Department will accept written comments through September 23, 2009.

ANALYSIS

A. Docket No. 16-0601-0901

Without specifically stating, section 485 has been amended to provide a definition for "treatment foster care" as "a family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision." This amended section changes the term from "professional foster care" to "treatment foster care." The section specifies that services that may be provided within the placement and provides that placement is based, in part, upon the clinical judgment of the Department.

Under the proposed rule, each prospective treatment foster parent must accomplish specified requirements, including meeting all foster family licensure requirements as set forth in Department rule, completing a Department approved initial training and providing references from individuals with specified qualifications. Under the existing rule, only one parent is required to possess a bachelor's degree of three years of specified experience. Section 485.01. A

continuing education requirement is also mandated by the proposed rule. Section 485.02. The proposed rule specifies that at least one treatment foster parent be available 24/7 to respond to the needs of the foster child. Section 485.03.

The payment to the treatment foster parent has been increased from \$1,000/month to \$1,800/month under the proposed rule, which includes payment for monthly room and board (ranging from \$274 to \$431 a month under the existing rule depending on the age of the child) and payments related to the need level of the child (ranging from \$90 to \$240 a month under the existing rule). The proposed rule specified that the purpose of the payment contract is to make clear that the treatment foster parents fulfill the requirements under the Department approved child's treatment plan. Sections 485.05 and 06.

The proposed rule states that a family caring for a child with special needs in Department custody is not required to pay the adoption services costs. Further, if a relative or kin family being considered for adoption of a child from foster care the Department's adoption fees are waived. However, these Department's adoption fees must be paid if the family pursues the adoption of a child not in Department custody. Under the existing rule, the waiver of fees is based upon an ability to pay. Section 831.

An initial two week progress report and a final progress report are dispensed with under the proposed rule, which clarifies that the progress reports be for each child. The proposed rule further clarifies that the family services worker's observations emphasize the adjustment of each child to school, daycare and/or day treatment program and adoption assistance negotiation. Emphasis no longer must emphasize whether respite care is a need of the family. Section 861.

The proposed rule removes an abandonment certificate issued by a governmental entity, either domestic or foreign, as a factor for determining if a child is "special needs." Section 900.02. A new subsection 900.05 of the proposed rule incorporates the amendments to section 473(a)(7) of the Social Security Act discussed above. Deleted from the existing rule are certain procedures regarding nonrecurring adoption reimbursement. Section 910.01.

B. Docket No. 16-0737-0901

The changes made to section 600 of this rule docket, regarding qualifications for a treatment foster parent, parallel those in Docket No. 16-0601-0901 at section 485.01. The purpose of the payment contract and the implementation of the treatment plan requirements under this rule docket also parallel the Docket No. 16-0601-0901 amendments in section 485.

SUMMARY

Both the Department's proposed rules appear to be authorized by sections 56-202(b) and 56-204A, Idaho Code. Docket No. 16-0601-0901 is further authorized by sections 39-1211 and 56-203(b), Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock, Chuck Halligan, Shirley Alexander & Kathy Morris

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; also Public Law 110-351, Section 402 (1)(B) re: changes related to international adoptions affecting Part E of Title IV of the Social Security Act, Section 473 (Adoption and Guardianship Program) (42 USC 673).

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 September 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The service of "professional foster care" is being renamed and its rules replaced with "treatment foster care" rules that align with the treatment foster care rules under IDAPA 16.07.37, "Children's Mental Health Services." Alignment between these two chapters will help eliminate confusion for foster parents providing treatment foster care who may be participating in either Child and Family Services or Children's Mental Health programs.

In addition, new rules are being proposed to clarify and resolve reimbursement issues related to contract payments to foster parents for additional services beyond regular or specialized foster care. This will be accomplished by setting out in rule the expectations for service and how payments will be structured. These new rules will increase accountability for treatment foster parents and improve services to children and youth in foster care who need a higher level of care due to behavioral and other mental health issues. The outcome of these new rules will be to increase the stability of foster care placements for children and youth who are hard to place and hard to maintain in foster care, and will better address their treatment needs.

Finally, changes are being made to update the adoption rules to increase regional efficiencies and to align rules with changes to federal law made under Public Law 110-351.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: 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. NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to align with the Treatment Foster Care rules found under IDAPA 16.07.37, "Children's Mental Health Services," with changes being made under Docket No. 16-0737-0901, and with changes to federal statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706 or Shirley Alexander at (208) 334-6618.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2009.

DATED this 31st day of July, 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
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0601-0901

485. PROFESSIONAL TREATMENT FOSTER CARE.

Placement in professional foster care for children who require professional care for clinically diagnosed emotional, behavioral, or physical problems must be based upon the documented needs of each child, including the inability of less restrictive settings to meet the child's needs and a determination that the child would require a more restrictive setting if professional foster care were not available. A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the child's treatment plan, behavior modification, community supports, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children in the custody of the Department under the purview of the Child Protective Act, is based on the documented needs of the child, the inability of less restrictive settings to meet the child's needs, and the clinical judgement of the Department. (3-30-07)()

01. Qualifications. At least one (1) parent must possess a bachelor's degree or three (3) years of experience in a human service delivery setting or be otherwise licensed or certified to provide specialized social and medical care to children, and neither parent can be a Department employee. Prior to being considered for designation and reimbursement as a treatment foster parent, each prospective treatment foster parent must accomplish the following: (3-30-07)()

a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensure"; ()

b. Complete Department-approved treatment foster care initial training; and ()

c. Provide a minimum of two (2) references in addition to those provided to be licensed to provide foster care. The additional references must be from individuals who have worked with the prospective treatment foster parent. The additional references must verify that the prospective treatment foster parent has: ()

i. Training related to, or experience working with, children or youth with mental illness or behavior disorders; and ()

ii. Demonstrated cooperation and a positive working relationship with families and providers of child welfare or mental health services. ()

02. Continuing Education. Following designation as a treatment foster home, each treatment foster home parent must complete fourteen (14) hours of additional training per year as specified in an agreement developed between the treatment foster parents and the Department. ()

03. Availability. At least one (1) treatment foster parent, in each treatment family home, must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. ()

024. Payment. ~~Payment will be made through a professional services contract with the Department for a basic rate and cost for social services total of one thousand dollars (\$1,000) per month per child. The Department will pay treatment foster parents up to one thousand eight hundred (\$1,800) dollars per month, per child, which includes the monthly payment rate specified in Sections 483 and 484 of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department. The purpose of the contract is to make clear that the treatment foster parents must fulfill the requirements for treatment foster parents under the child's treatment plan referenced in Subsection 485.06 of this rule.~~ (3-30-07)()

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

036. Treatment Plan. The ~~professional~~ treatment foster parent(s) must implement ~~a~~ the portions of the Department-approved treatment plan for which they are designated as responsible, ~~developed in conjunction with the child's family services worker,~~ for each child in their care. This plan is incorporated as part of the family services plan identified in Section 011.05 of these rules. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

831. HOME STUDY, SUPERVISORY REPORTS, AND REPORTS OF THE COURT FEES.

A family who cares for a child, or children, with special needs ~~through who is in the custody of the Department foster care program, who is not able to pay the costs associated with the pre-placement home study, supervisory reports, or the report to the court, may apply to the regional Child and Family Services Program Manager for a waiver of some or all of the fees~~ is not required to pay the costs of the Department adoption services identified in Section 832 of these rules for the adoption of that child, or children. A relative or kin family being considered by the Department for adoption of a child from foster care who is their relative or kin, is not required to pay the costs referenced in Section 832 of these rules. If a family who ~~receives a waiver of the pre-placement home study fee~~ did not pay the fee uses that home study to pursue adoption of a child not in the Department's custody, ~~the Department will rescind the waiver and the family will be expected to~~ must pay the Department for the full cost of the study and any other applicable fees identified in Section 832 of these rules. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

861. PROGRESS REPORTS.

Progress reports will be prepared regularly and will be based on the family services worker's findings. (3-30-07)

01. Initial and Subsequent Reports. ~~The first p~~Progress reports must be made ~~within two (2) weeks after placement, and subsequent progress reports must be made~~ at intervals not to exceed thirty (30) days. These reports will include: (3-30-07)

~~a.~~ The family services worker's observation of ~~the~~ each child and the prospective adopting parent(s), with emphasis on: (5-3-03)()

~~ba.~~ Special needs, special circumstances, or both, of each child ~~(ren)~~ at time of placement; (3-18-99)()

~~eb.~~ Services provided to each child ~~(ren)~~ and the family during the report period; (3-18-99)()

~~ec.~~ Services to be provided to each child ~~(ren)~~ and the family; (3-18-99)()

- ed.** General appearance and adjustment of each child~~(ren)~~ during the report period (may include eating, sleep patterns, responsiveness, bonding); (3-18-99)(____)
- fe.** Adjustment of each child to all of the following that apply: School, daycare, and day treatment program adjustment; (3-18-99)(____)
- gf.** Health ~~and~~ developmental progress, and medical practitioner information for each child; (3-18-99)(____)
- hg.** Whether ~~the~~ each child~~(ren)~~ has been accepted for coverage on the family's medical insurance, when coverage begins, and whether there will be any limitations, exclusions, or both; (3-30-01)(____)
- ih.** Family's adjustment to adoptive placement; (3-18-99)
- ji.** ~~Whether respite care is a need for the family~~ Adoption assistance negotiation; (3-18-99)(____)
- kj.** Changes in family situation or circumstances; (3-18-99)
- lk.** Areas of concern during the report period as addressed by ~~both~~ each child~~(ren)~~ and the adoptive parent(s); and (5-3-03)(____)
- ml.** ~~The~~ Date of the next required six (6) month review or twelve (12) month permanency hearing; (3-18-99)(____)

02. Monthly Foster Care Payments -- Pre-Adoptive Placement. To receive Title IV-E monthly foster care payments during the period pending completion of adoption, the prospective adoptive parent(s) must have a foster care license. (3-20-04)

~~**03. Final Progress Report.** The final report must include pertinent information about the readiness of the child and the family for completion of the adoption. The family's decision to apply for adoption assistance benefits for the child should be documented. The family's attorney who will be handling the finalization of the adoption should be identified. The family's health insurance carrier should be identified, along with the date the child's medical coverage will begin. An up-to-date medical report on the child must be obtained from the child's physician, so that the Department will have current information about the health of the child. Any problem in placement must be brought to the attention of the Department.~~ (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

900. ADOPTION ASSISTANCE.

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Service's, the Division will respond with a determination of the child's eligibility within forty-five (45) days. (3-30-07)

01. Determination of Eligibility for Title IV-E Adoption Assistance. Child and Family Services will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: (5-8-09)

- a.** Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the

public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria at the time of removal from his home. (5-8-09)

i. If the child is removed from his home in accordance with the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-8-09)

ii. If the child is removed from the home in accordance with a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance. (5-8-09)

b. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. (5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care is not relevant. (5-3-03)

c. Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which lead to the removal of the child from his home; (5-3-03)

ii. At the time of the voluntary relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-8-09)

d. Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

02. Special Needs Criteria. The definition of special needs includes the following factors: (3-30-07)

- a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights ~~or an Abandonment Certificate~~ or its equivalent ~~issued by a governmental entity either domestic or foreign~~; and (5-8-09)(____)
- b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or (3-18-99)
- c. The child's age makes it difficult to find an adoptive home; or (3-18-99)
- d. The child is a member of a sibling group that must not be placed apart; and (5-3-03)
- e. State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (5-3-03)

03. Determination of Eligibility for State Funded Adoption Assistance. Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. (3-30-07)

04. Interjurisdictional Adoptions. When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E adoption assistance benefits. (3-30-07)

05. International Adoptions and Adoption Assistance. A child who meets the criteria for special needs under Subsection 900.02 of this rule, who is not a citizen or resident of the United States, and who was adopted outside of the United States or was brought into the United States for the purpose of being adopted, is not eligible to receive adoption assistance. This restriction does not prohibit adoption assistance payments for a child described in this Subsection who is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the adoptive parents. (____)

(BREAK IN CONTINUITY OF SECTIONS)

910. TYPES AND AMOUNTS OF ASSISTANCE.

The needs of the child and the family, including any other children in the family, will be considered in determining the amount and type of support to be provided. Assistance may include the following: (3-30-07)

01. Nonrecurring Adoption Reimbursement. Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. ~~Families applying for Nonrecurring Adoption Reimbursement separate from the regular Adoption Assistance program must submit an application for Nonrecurring Adoption Expenses Reimbursement, obtain a determination of eligibility, and negotiate a Nonrecurring Adoption Expenses Reimbursement Agreement prior to the finalization of the child's adoption. Families applying for Nonrecurring Adoption Expenses Reimbursement on behalf of a child who is adopted through an international adoption must~~

~~submit an application for Nonrecurring Adoption Expenses Reimbursement, obtain a determination of eligibility, and negotiate a Nonrecurring Adoption Expenses Reimbursement Agreement prior to the family's departure to the foreign country and the child's adoption in the foreign country.~~ Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits.

(5-3-03)()

02. Monthly Cash Payment. Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount must not exceed the rate for family foster care which would be made if the child were in a family foster home in Idaho. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk becomes evident. For children who are currently eligible for Personal Care Services (PCS), the professional foster care rate may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. (3-30-07)

03. Title XIX -- Medicaid Coverage. Any child with special needs who has an adoption assistance agreement in effect is also eligible for medical coverage. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage must apply to the Idaho Health Insurance Premium Payment (HIPP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance has reached its benefit limit. All services reimbursed by Medicaid must be determined to be medically necessary. Prior authorization may be required for some Medicaid reimbursable services. Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. (3-30-07)

04. Title XX -- Social Services. Any child with special needs who has an Adoption Assistance Agreement is also eligible for state-authorized Title XX - Federal Social Services Block Grant funded services. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Since both Child and Family Services and the Children's Mental Health program use the same treatment foster care resources, the rules in this chapter pertaining to treatment foster care are being aligned with the corresponding rules in the Department's "Child and Family Services" chapter. This will reduce confusion for treatment foster care providers, make training of providers more efficient, increase the stability of placements for children and youth who are hard to place and hard to maintain in foster care, and improve outcomes for children and youth in treatment foster care.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: 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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to align with the Treatment Foster Care rules proposed under IDAPA 16.06.01, "Child and Family Services," Docket No. 16-0601-0901.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2009.

DATED this 31st day of July, 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 PROPOSED TEXT FOR DOCKET NO. 16-0737-0901

600. TREATMENT FOSTER CARE.

A family home setting in which treatment foster parents provide twenty-four (24) hour room and board as well as therapeutic services and a high level of supervision. Services provided in treatment foster care are at a more intense level than provided in foster care and at a lower level than provided in residential care. Services may include the following: participation in the development and implementation of the child's treatment plan, behavior modification, community supports, crisis intervention, documentation of services and the child's behavior, participation as a member of a multi-disciplinary team, and transportation. Placement into a treatment foster home for children eligible for services under Subsection 407 of these rules is based on the documented needs of the child, the inability of less restrictive settings to meet the child's needs, and the clinical judgement of the Department. (5-8-09)(____)

01. Qualifications. ~~A treatment foster parent must~~ Prior to being considered for designation and reimbursement as a treatment foster parent, each prospective treatment foster parent must accomplish the following: (5-8-09)(____)

a. Meet all foster family licensure requirements as set forth in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"; (5-8-09)

b. Complete Department-approved treatment foster care initial training; and (5-8-09)

c. ~~Complete fourteen (14) hours of additional training per year thereafter. The fourteen (14) hours of additional training will be specified in an agreement developed between the treatment foster parents and the Department.~~ Provide a minimum of two (2) references in addition to those provided to be licensed to provide foster care. The additional references must be from individuals who have worked with the prospective treatment foster parent. The additional references must verify that the prospective treatment foster parent has: (5-8-09)(____)

i. Training related to, or experience working with, children or youth with mental illness or behavior disorders; and (____)

ii. Demonstrated cooperation and a positive working relationship with families and providers of mental health services. (____)

02. Continuing Education. Following designation as a treatment foster home, each treatment foster home parent must complete fourteen (14) hours of additional training per year as specified in an agreement developed between the treatment foster parents and the Department. (____)

023. Availability. At least one (1) treatment foster parent in each treatment family home must be available twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the foster child. (5-8-09)(____)

034. Payment. The Department will pay treatment foster parents up to one thousand eight hundred (\$1,800) dollars per month per child, which includes the monthly payment rate specified in Sections 583 and 584 of these rules. The payment will be made to treatment foster parents in accordance with a contract with the Department, ~~to enable them to~~ The purpose of the contract is to make clear that the treatment foster parents must fulfill the requirements for treatment foster parents under the treatment plan referenced in Subsection 600.056 of this rule. (5-8-09)(____)

045. Payment to Contractors. The Department may also provide treatment foster care through a contract with an agency that is a private provider of treatment foster care. The Department will specify the rate of payment in the contract with the agency. (5-8-09)

056. Treatment Plan. The treatment foster parent(s) must implement ~~a~~ the portions of the Department-approved treatment plan for which they are designated as responsible, ~~developed in conjunction with the child's clinician,~~ for each child in their care. This plan is incorporated as part of the treatment plan identified in Section 101 of these rules. (5-8-09)(____)