

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 16.03.01 – Eligibility for Health Care Assistance for Families and Children

(Docket No. 16-0301-1002).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the co-chairmen 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 10-29-10. 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 11-30-10.

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 334-4845, or send a written request to the
address or FAX number indicated on the memorandum attached.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

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

FROM: Research & Legislation Staff - Paige Alan Parker **PAP**

DATE: October 12, 2010

SUBJECT: Department of Health and Welfare:
IDAPA 16.03.01 – Eligibility for Health Care Assistance for Families and Children (Docket No. 16-0301-1002) (Temporary and Proposed)

The Department of Health and Welfare submits temporary and proposed rule Docket No. 16-0301-1002), Eligibility for Health Care Assistance for Families and Children (hereafter, “proposed rule”. The Governor’s justifications for the temporary rule are to provide a benefit and to comply with federal legislation. The temporary rule took effect on April 1, 2009, December 19, 2009, January 1, 2010, and September 1, 2010.

According to the Department, the proposed rule addresses a number of issues. First, the proposed rule is said to provide more choices for Idaho citizens seeking health coverage for their children: allow any SCHIP eligible child to be enrolled in the Children’s Access Card, increasing eligibility for the Access Card for children between age 6 and 19 and with family incomes between 100% and 185% of the federal poverty level; and allow for the U.S. citizenship and identity of first-time applications for Medicaid and SCHIP to be verified through a data match with the Social Security Administration when it has previously verified citizenship identity. The Department states that the proposed rule also: updates the eligibility time period for special immigrants; adds requirements for children eligible for Title XXI SCHIP coverage to meet verification of U.S. citizenship requirement; and adds language allowing an individual eligible for Medicaid to receive services for 90 days while verification of U.S. citizenship and identity are pending.

According to the Department, the proposed rule is authorized pursuant to sections 56-202, 56-203, 56-209, 56-237 through 56-240, 56-242, 56-250, 56-253, 56-255 and 56-257, Idaho

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Code, section 211 of the Children's Health Insurance Program (CHIP) Reauthorization Act of 2009, and P.L. 111-118, section 8120.

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority under Idaho's public assistance law. Section 56-203(2), 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(7), 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 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.

Section 211 of the CHIP Reauthorization Act of 2009, provides methods and procedures for verifying the citizenship or nationality for the purpose of eligibility for Medicaid. Part of the process involves submission of the individual's name and social security number to the Commissioner of Social Security, which may be done electronically. Section 8120 of P.L. 111-118, provides for resettlement support and other public benefits for certain Iraqi refugees and Afghan allies.

According to the Department, no fees or charges are imposed by the proposed rule. The Department states that the proposed rule has a total anticipated fiscal impact to the General Fund of \$120,714, which is the state's portion at the current federal match rates for this rulemaking.

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 October 20, 2010. All written comments must be delivered to the Department on or before October 27, 2010.

ANALYSIS

The eight-month Medicaid eligibility limit for Afghan and Iraqi special immigrants has been deleted by the proposed rule. Sections 220.13 and 14 and 525.02. The proposed rule deletes provisions exempting Afghan and Iraqi special immigrants from sponsor deeming requirements. Section 251.

The proposed rule specifies Title XIX Medicaid and adds Title XXI SCHIP to verification of United States citizenship and identity requirement. Section 221. Applicants for Medicaid are given 90 days to provide proof of U.S. citizenship and identity with Medicaid benefits being provided pending verification if all other eligibility requirements are met. However, the benefits will be denied if the applicant refuses to obtain documentation. Sections 224.01 and 02.c. Individuals, whose name, social security number and declaration of U.S. citizenship have been confirmed to match Social Security Administration records, are considered to have met the U.S. citizenship and identity documentation requirements. Section 225.06.

The proposed rule distinguishes Children's Access Card eligibility requirements for children under six years of age and those six years of age or older. For children under six years, family income must exceed 133% but be less than or equal to 185% of the federal poverty guideline for the family size. For children six or older, family income must exceed 100% and be less than or equal to 185 % of the federal poverty guideline for the family size. Section 560.

SUMMARY

The Department's proposed rule appears to be authorized under sections 56-202(b), 56-203(2) and (7), Idaho Code.

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1002

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATES: The effective dates of these temporary rules are: April 1, 2009, December 19, 2009, January 1, 2010, and September 1, 2010.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. 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, Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009," and federal Public Law no. 111-118, Sec. 8120.

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 October 20, 2010.

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:

1. This rulemaking contains two changes that provide more choices for Idaho citizens seeking health coverage for their children, and will streamline the application process for children and families whose U.S. citizenship must be verified.

a. This rule change will allow for any child eligible for SCHIP to be enrolled in Children's Access Card, which means that children between the ages of 6 and 19 with family income exceeding 100% of FPL and less than or equal to 185% of FPL can also qualify for Children's Access Card.

b. This rule change will allow for the U.S. citizenship and identity of first-time applicants for Medicaid and SCHIP to be verified through a data match with the Social Security Administration (SSA), when the SSA has previously verified citizenship and identity.

2. This rule change also updates the eligibility time period for special immigrants based on federal regulations that extended the eligibility time period.

3. Also added are requirements for children eligible for coverage under Title XXI SCHIP to meet the verification of U.S. citizenship and identity requirements.

4. Lastly, language was added stating that an individual found eligible for Medicaid will receive services for 90 days while verification of U.S. citizenship and identity are pending.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate. The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Number 1, as described in the descriptive summary, provides a benefit by giving additional families a choice between having the Department provide direct health coverage for their children in the form of the SCHIP program, and purchasing private health insurance for their children, with the Department subsidizing the child's premium. This rulemaking also helps participants applying for Medicaid as they will not have to make multiple trips to Department offices in order to allow Department staff to view original birth certificates or other paper documents.

Rule changes being made in Numbers 2, 3, and 4, stated in the descriptive summary, are required by federal legislation, i.e., Number 2 - federal Public Law no. 111-118, Sec. 8120; Number 3 and 4 - Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009."

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: None.

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 anticipated fiscal impact to the state general fund is \$120,714, which is the state's portion at the current federal match rates for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes are due to federal regulations.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS: 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 October 27, 2010.

DATED this 18th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0301-1002

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 eight (8) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status.~~ ~~(3-29-10)~~ (12-19-09)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)~~ (12-19-09)T

221. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

Any individual who participates in a Title XIX Medicaid or Title XXI SCHIP funded program must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Section 225 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. ~~(3-30-07)~~ (1-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

224. ELIGIBILITY FOR APPLICANTS AND MEDICAID PARTICIPANTS WHO DO NOT PROVIDE CITIZENSHIP AND IDENTITY DOCUMENTATION.

01. Applicants. ~~Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation.~~ Medicaid applicants have ninety (90) days to provide proof of U.S. citizenship and identity. Medicaid benefits will be approved pending verification of U.S. citizenship and identity if the participant meets all other eligibility requirements. Medicaid will be denied if the applicant refuses to obtain documentation. ~~(3-30-07)~~ (4-1-09)T

02. Participants. Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

- a. Does not meet other eligibility criteria required in this chapter of rules; ~~or~~ ~~(3-30-07)~~ (4-1-09)T
- b. Refuses to obtain the documentation; or ~~(3-30-07)~~ (4-1-09)T
- c. Fails to provide the documentation within ninety (90) days of a request for the documentation. ~~(4-1-09)T~~

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)
 05. Individuals Deemed Eligible for Medicaid as a Waived Newborn Under Section 530 of these Rules. (3-29-10)
 06. **Individuals Whose Name, Social Security Number, and Declaration of U.S. Citizenship Have Been Confirmed to Match the Records of the SSA.** (9-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

251. SPONSOR DEEMING.

Income and resources of a legal non-citizen's sponsor and the sponsor's spouse are counted in determining eligibility. *Sponsor deeming is not required for the following non-citizens:* (5-8-09)(12-19-09)T

- ~~a.~~ *Afghan special immigrants as described in Section 220 of these rules; or* (5-8-09)
- ~~b.~~ *Iraqi special immigrants as described in Section 220 of these rules.* (5-8-09)

(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; ~~or~~ (5-8-09)(12-19-09)T
 - b. A child is approved for pregnancy-related services; ~~or~~ (5-8-09)(12-19-09)T

- ~~e.~~ A child is an Afghan special immigrant and is approved for eight (8) months; or (3-29-10)
- ~~d.~~ A child is an Iraqi special immigrant and is approved for eight (8) months. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

560. CHOOSING CHILDREN'S ACCESS CARD.

Participants may choose Children's Access Card for a child when their countable family income ~~exceeds one-hundred thirty-three percent (133%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty Guideline for his family size~~ meets the standards of Subsection 560.01 or 560.02 of this rule.
(3-30-07)(9-1-10)T

01. Children Under the Age of Six. Family income exceeds one-hundred thirty-three percent (133%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty Guideline for his family size. (9-1-10)T

02. Children Six Years of Age or Older. Family income exceeds one-hundred percent (100%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty guideline for his family size. (9-1-10)T