

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 16.03.09 - Medicaid Basic Plan Benefits (Dockets #16-0309-1001 & #16-0309-1002).

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  
8-19-10. 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 9-17-10.

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:** August 2, 2010

**SUBJECT:** Department of Health and Welfare - IDAPA 16.03.09 - Medicaid Basic Plan Benefits, Docket Nos. 16-0309-1001 and 16-0309-1002) (Temporary and Proposed)

By these Temporary and Proposed Docket Nos. 16-0309-1001 and 16-0309-1002 (hereinafter "proposed rule"), the Department of Health and Welfare amends IDAPA 16.03.09 dealing with the Medicaid Basic Plan of Benefits. The Governor's justification for both temporary rules is to comply with deadlines in amendments to governing law. The temporary rule in Docket No. 16-0309-1001 became effective on July 1, 2008; the temporary rule in Docket No. 16-0309-1002 becomes effective on September 1, 2010.

According to the Department, the proposed rule under Docket No. 16-0309-1001 is authorized by sections 55-819 and 56-225, Idaho Code, and SB 1321 (2010), while the proposed rule under Docket No. 16-0309-1002 is authorized by section 56-202(b), Idaho Code, and HB 701 (2010).

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority. HB 701 is the 2010 appropriation for the Department's medical assistance services. The legislative intent found at section 13 of that appropriation authorizes the Department, by temporary rule, to impose requirements for Medicaid programs funded by the General Fund in order to ensure that the Department's Medicaid programs do not exceed the appropriation.

SB 1321 created new section 56-225, Idaho Code, which permits the Department to have recorded in the county real property records a Request for Notice of Transfer or Encumbrance when an individual who has received medical assistance is the holder of real property. The

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Research & Legislation

**Cathy Holland-Smith, Manager**  
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Information Technology

Department is also authorized to record a Termination of Request for Notice of Transfer or Encumbrance when it is no longer necessary or appropriate for the Department to monitor transfers or encumbrance. SB 1321 (2010) also created new section 55-819, Idaho Code, which requires an individual identified in a Request that has been recorded in the county real property records to provide the Department a Notice of Transfer or Encumbrance within ten day after the date of the transfer or encumbrance of the real property. The Department is required to adopt, by rule, the Request, Notice and Termination forms.

The Department states that the purpose of Docket No. 16-0309-1001 is to come into compliance with SB 1321. In doing so, the Department has sought to reformat section 900 of this chapter, which it describes as “long and cumbersome.” The stated purpose of Docket No. 16-0309-1002 is to implement a selective contract system for federally mandated non-emergency medical transportation services based on legislative intent for controlling costs, while improving quality and sustaining access.

According to the Department, no fee or charge is imposed by either proposed rule. The Department states that the proposed rule under Docket No. 16-0309-1001 should have a positive fiscal effect by preventing improper asset transfers and by increased recovery of assets. The Department states that the proposed rule under Docket No. 16-0309-1002 will save \$940,775 during the ten remaining months of fiscal year 2001, \$188,155 of which would be to the General Fund.

According to the Department, negotiated rulemaking was not conducted because the changes are in response to recent legislation. The Department states that a public hearing will be held on Docket No. 16-0309-1001, if requested in writing by 25 persons, a political subdivision or an agency and that a public hearing is scheduled on Docket No. 16-0309-1002 in Boise on August 13, 2010. All written comments on either docket must be delivered to the Department on or before August 25, 2010.

## ANALYSIS

### **A. Docket No. 16-0309-1001 - Sections 900 through 909 on Liens and Estate Recovery**

This proposed rule changes the organization of section 900 by spreading it out over seven sections, six of which are new, and by making many nonsubstantive wording and reference changes. The changes to what is remaining of section 900 include citations to sections 55-819 and 56-225, Idaho Code (discussed above), and references the recording of the Request for Notice. New section 901 now contains the relevant definitions, none of which have changed. Requests for Notice must be directed to the Department under section 902.

The new language regarding Requests for Notice is contained in new section 906. The Department must provide written notice to the participant (or representative) of its intent to record a Request for Notice. Minimum requirements are required for the Notice. Section 906.01. Interested persons are directed to a site on the Department’s web page for Request,

Notice and Termination forms. The minimum contents for the Request are also set forth. Section 906.02.

## **B. Docket No. 16-0309-1002 - Sections 009, 870 and 871 on Non-Emergency Medical Transportation Services**

Under the proposed rule, non-emergency medical transportation services are provided through a provider (contracted or individual) who is under contract with a broker, who, in turn, is under contract with the Department. Under the old rule, non-emergency medical transportation services were provided by a commercial, non-commercial or agency provider. This change in approach has resulted in a significant reduction in the rules related to non-emergency medical transportation services.

### **1. Standard Provisions**

All staff of the transportation provider having contact with participants, with the exception of individual contracted transportation providers, must comply with the Department's rule on criminal history and background checks. Section 009.04.b.

### **2. Definitions**

Because of the change in how non-emergency medical transportation services are provided, the definitions have changed substantially. Gone are definitions for "commercial transportation provider," "non-commercial transportation provider," and "agency transporter." New definitions are provided for "contracted transportation provider," "individually contracted transportation provider," "non-emergency medical transportation," "transportation broker," and "travel-related services." Section 870.

An "individual contracted transportation provider," section 870.02, and a "contracted transportation provider," section 870.01, are both under contract with a transportation broker to provide non-emergency medical transportation to Medicaid participants. The difference is that the "individual contracted transportation provider" provides the service to a single participant in the provider's personal vehicle. "Non-emergency transportation" is defined as that being required for a Medicaid participant to access medically necessary services covered by Medicaid when the participant's own, family or community transportation resources do not allow the participant to reach those services. Section 870.03. A "transportation broker" is an entity under contract with the Department to administer, coordinate and manage a statewide network of non-emergency medical transportation providers. Section 870.04. "Travel-related services" are meals, lodging and attendant care required to non-emergency medical services to be completed for a participant. Section 870.05.

### **3. Regulations**

New section 871 deals with the duties of the transportation broker, an entity that

coordinates and manages all non-emergency transportation services for Medicaid participants statewide. This broker is required to: contract with transportation providers, operate a call center to receive and review transportation, authorize transportation services, reimburse providers and assure that providers deliver the services in a safe and professional manner.

Section 872 has been revised regarding non-emergency medical transportation coverage and limitations. Removed from the section are references to waiver services. The section sets forth the conditions required for provider reimbursement by the broker: the travel is essential, the mode of transportation is the least costly and appropriate for the participant, transportation is to the nearest appropriate medical provider, transportation is by the most direct route practicable, other modes of transportation (family friends, charitable organization) are unavailable or impractical, the travel is authorized and scheduled by the broker, and the provider is in compliance with its contract with the broker. Section 872.01. Not a condition for reimbursement under the proposed rule is that the person for whom services are billed is actually transported for all the distance billed, old rule, section 872.01.b, and that reimbursement is limited to the distance of the most direct route practicable, old rule, section 872.01.d.

Section 872.02 provides the conditions for reimbursement of travel-related services. This new section replaces old rule, section 872.03, on services incidental to travel. These travel-related services include the reasonable cost of in-transit meals when there is no other practical means of obtaining food; the reasonable cost of lodging when the service cannot be completed in the same day and no less costly alternative is available; and the reasonable cost of wages for an attendant when necessary and no family member or unpaid attendant is available. The reasonable cost of meals and lodging for one family member or attendant will be reimbursed under similar conditions.

The proposed rule removes provisions regarding exceptions to the rule regarding reimbursement, old rule, section 872.02; non-commercial transportation providers, old rule, sections 872.04 and 05; out-of-state transport, old rule, section 872.06; procedural requirements for non-emergency transportation services, old rule, section 873; provider qualifications and duties, old rule, section 874; and detailed procedural requirements for provider reimbursement, old rule, section 875.

## SUMMARY

The Department's proposed rule under Docket No. 16-0309-1001, appears to be authorized under sections 55-819 and 56-225, Idaho Code; the Department's proposed rule under Docket No. 16-0309-1002, appears to be authorized under sections 56-202(b), Idaho Code.

cc: Department of Health and Welfare  
Tamara Prisock, Larry Tisdale and Sara Stith

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.09 - MEDICAID BASIC PLAN BENEFITS**

#### **DOCKET NO. 16-0309-1001**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 55-819 and 56-225, Idaho Code, adopted by the 2010 Legislature under Senate Bill 1321.

**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 August 18, 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 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:

Statute changes effective on July 1, 2010, required the Department to provide a model form for notice of transfer or encumbrance to be used by a Medicaid recipient or his representative when notifying the Department of transferring real property. This requirement for a request of notice form is being added into Section 900, Liens and Estate Recovery. Because this section is long and cumbersome, the Department decided to reformat the rule into more user friendly sections at this time. Other minor changes have been made for clarity and understanding of these rules.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary for compliance with deadlines in amendments to governing law.

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

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

This rule change will have no negative fiscal impact to the state general funds. This change should have a positive fiscal effect by preventing improper asset transfers and increase recovery of assets that otherwise would be missed.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet statutory changes adopted by the 2010 Legislature under Senate Bill 1321.

**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, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Larry Tisdale at (208) 287-1141.

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 August 25, 2010.

DATED this 30th day of June, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0309-1001

SUB AREA: LIENS AND ESTATE RECOVERY  
(Section 900 - 909)

**900. LIENS AND ESTATE RECOVERY.**

In accordance with Sections 55-819, 56-218, ~~and~~ 56-218A, and 56-225, Idaho Code, this Section of rule sets forth the provisions for recovery of medical assistance, the filing of liens against the property of deceased persons, ~~and~~ the filing of liens against the property of permanently institutionalized participants, and the recording of requests for notice. ~~(3-30-07)(7-1-10)T~~

**01. Medical Assistance Incorrectly Paid.** The Department may, pursuant to a judgment of a court, file a lien against the property of a living or deceased person of any age to recover the costs of medical assistance incorrectly paid. (3-30-07)

**02. Administrative Appeals.** Permanent institutionalization determination, ~~and~~ undue hardship waiver, and request for notice hearings are governed by the fair hearing provisions of IDAPA 16, ~~Title~~ 05, ~~Chapter~~ 03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~(3-30-07)(7-1-10)T~~

**~~9001.~~ LIENS AND ESTATE RECOVERY - DEFINITIONS.**

The following terms are applicable to Sections 900 through 909 of this chapter of rules: ~~(3-30-07)(7-1-10)T~~

**~~01.~~ Authorized Representative.** The person appointed by the court as the personal representative in a probate proceeding or, if none, the person identified by the participant to receive notice and make decisions on estate matters. (3-30-07)

**~~02.~~ Discharge From a Medical Institution.** A medical decision made by a competent medical professional that the Medicaid participant no longer needs nursing home care because the participant's condition has improved, or the discharge is not medically contraindicated. (3-30-07)

**~~03.~~ Equity Interest in a Home.** Any equity interest in real property recognized under Idaho law. (3-30-07)

**~~04.~~ Estate.** All real and personal property and other assets including those in which the participant had any legal or beneficial title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assignee of the deceased participant through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. (3-30-07)

**~~05.~~ Home.** The dwelling in which the participant has an ownership interest, and which the participant occupied as his primary dwelling prior to, or subsequent to, his admission to a medical institution. (3-30-07)

**~~06.~~ Institutionalized Participant.** An inpatient in a nursing facility (NF), intermediate care facility for

people with intellectual disabilities (ICF/ID), or other medical institution, who is a Medicaid participant subject to post-eligibility treatment of income in IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-30-07)

~~g~~**07. Lawfully Residing.** Residing in a manner not contrary to or forbidden by law, and with the participant's knowledge and consent. (3-30-07)

~~h~~**08. Permanently Institutionalized.** An institutionalized participant of any age who the Department has determined cannot reasonably be expected to be discharged from the institution and return home. Discharge refers to a medical decision made by a competent medical professional that the participant is physically able to leave the institution and return to live at home. (3-30-07)

~~i~~**09. Personal Property.** Any property not real property, including cash, jewelry, household goods, tools, life insurance policies, boats and wheeled vehicles. (3-30-07)

~~j~~**10. Real Property.** Any land, including buildings or immovable objects attached permanently to the land. (3-30-07)

~~k~~**11. Residing in the Home on a Continuous Basis.** Occupying the home as the primary dwelling and continuing to occupy such dwelling as the primary residence. (3-30-07)

~~l~~**12. Termination of a Lien.** The release or dissolution of a lien from property. (3-30-07)

~~m~~**13. Undue Hardship.** Conditions that justify waiver of all or a part of the Department's claim against an estate, described in Subsections ~~900.25~~ 905.06 through ~~900.29~~ 905.10 of ~~this~~ these rules. (~~3-30-07~~)(7-1-10)T

~~n~~**14. Undue Hardship Waiver.** A decision made by the Department to relinquish, limit, or defer its claim to any or all estate assets of a deceased participant based on good cause. (3-30-07)

**04902. LIENS AND ESTATE RECOVERY - NOTIFICATION TO DEPARTMENT.**

All notification regarding liens, ~~and~~ estate claims, and requests for notice must be directed to the Department of Health and Welfare, Estate Recovery Unit, 3276 Elder, Suite B, P.O. Box 83720, Boise, Idaho, 83720-0036. (~~3-30-07~~)(7-1-10)T

**903. LIENS AND ESTATE RECOVERY - LIEN DURING LIFETIME OF PARTICIPANT.**

~~05~~**1. Lien Imposed During Lifetime of Participant.** During the lifetime of the permanently institutionalized participant, and subject to the restrictions set forth in Subsection ~~900.08~~ 903.04 of this rule, the Department may impose a lien against the real property of the participant for medical assistance correctly paid on his behalf. The lien must be filed within ninety (90) days of the Department's final determination, after notice and opportunity for a hearing, that the participant is permanently institutionalized. The lien is effective from the beginning of the most recent continuous period of the participant's institutionalization, but not before July 1, 1995. Any lien imposed will dissolve upon the participant's discharge from the medical institution and return home. (~~3-30-07~~)(7-1-10)T

~~06~~**2. Determination of Permanent Institutionalization.** The Department must determine that the participant is permanently institutionalized prior to the lien being imposed. An expectation or plan that the participant will return home with the support of Home and Community Based Services does not, in and of itself, justify a decision that he is reasonably expected to be discharged to return home. The following factors must be considered when making the determination of permanent institutionalization: (3-30-07)

**a.** The participant must meet the criteria for nursing facility or ICF/ID level of care and services as set forth in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 220 through 299, and 580 through 649; (3-30-07)

**b.** The medical records must be reviewed to determine if the participant's condition is expected to improve to the extent that he will not require nursing facility or ICF/D level of care; and (3-30-07)

c. Where the prognosis indicated in the medical records is uncertain or inconclusive, the Department may request additional medical information, or may delay the determination until the next utilization control review or annual Inspection of Care review, as appropriate. (3-30-07)

**073. Notice of Determination of Permanent Institutionalization and Hearing Rights.** The Department must notify the participant or his authorized representative, in writing, of its intention to make a determination that the participant is permanently institutionalized, and that he has the right to a fair hearing in accordance with Subsection 900.02 of ~~this~~ these rules. This notice must ~~include~~ inform the participant of the following information, at a minimum: ~~(3-30-07)~~(7-1-10)T

a. The ~~notice must inform the participant that the~~ Department's decision that he cannot reasonably be expected to be discharged from the medical institution to return home is based upon a review of the medical records and plan of care, but that this does not preclude him from returning home with services necessary to support nursing facility or ICF/ID level of care; and ~~(3-30-07)~~(7-1-10)T

b. ~~The notice must inform the participant that h~~He or his authorized representative may request a fair hearing prior to the Department's final determination that he is permanently institutionalized. The notice must include information that a pre-hearing conference may be scheduled prior to a fair hearing. The notice must include the time limits and instructions for requesting a fair hearing. ~~(3-30-07)~~(7-1-10)T

c. ~~The notice must inform the participant that i~~If he or his authorized representative does not request a fair hearing within the time limits specified, his real property, including his home, may be subject to a lien, contingent upon the restrictions in Subsection ~~900.08~~ 903.04 of this rule.. ~~(3-30-07)~~(7-1-10)T

**084. Restrictions on Imposing Lien During Lifetime of Participant.** A lien may be imposed on the participant's real property; however, no lien may be imposed on the participant's home if any of the following is lawfully residing in such home: (3-30-07)

a. The spouse of the participant; (3-30-07)

b. The participant's child who is under age twenty-one (21), or who is blind or disabled as defined in 42 U.S.C. 1382c as amended; or (3-30-07)

c. A sibling of the participant who has an equity interest in the participant's home and who was residing in such home for a period of at least one (1) year immediately before the date of the participant's admission to the medical institution, and who has been residing in the home on a continuous basis. (3-30-07)

**095. Restrictions on Recovery on Lien Imposed During Lifetime of Participant.** Recovery will be made on the lien from the participant's estate, or at any time upon the sale of the property subject to the lien, but only after the death of the participant's surviving spouse, if any, and only at a time when: (3-30-07)

a. The participant has no surviving child who is under age twenty-one (21); (3-30-07)

b. The participant has no surviving child of any age who is blind or disabled as defined in 42 U.S.C. 1382c as amended; and (3-30-07)

c. In the case of a lien on a participant's home, when none of the following is lawfully residing in such home who has lawfully resided in the home on a continuous basis since the date of the participant's admission to the medical institution: (3-30-07)

i. A sibling of the participant, who was residing in the participant's home for a period of at least one (1) year immediately before the date of the participant's admission to the medical institution; or (3-30-07)

ii. A son or daughter of the participant, who was residing in the participant's home for a period of at least two (2) years immediately before the date of the participant's admission to the medical institution, and who establishes by a preponderance of the evidence that he provided necessary care to the participant, and the care he

provided allowed the participant to remain at home rather than in a medical institution. (3-30-07)

**406. Recovery Upon Sale of Property Subject to Lien Imposed During Lifetime of Participant.** Should the property upon which a lien is imposed be sold prior to the participant's death, the Department will seek recovery of all medical assistance paid on behalf of the participant, subject to the restrictions in Subsection ~~900.09~~ ~~903.05~~ of ~~these~~ this rules. Recovery of the medical assistance paid on behalf of the participant from the proceeds from the sale of the property does not preclude the Department from recovering additional medical assistance paid from the participant's estate as described in Subsection ~~900.14~~ 904.01 of ~~this~~ these rules. (~~3-30-07~~)(7-1-10)T

**407. Filing of Lien During Lifetime of Participant.** When appropriate, the Department will file, in the office of the Recorder of the county in which the real property of the participant is located, a verified statement, in writing, setting forth the following: (3-30-07)

- a. The name and last known address of the participant; and (3-30-07)
- b. The name and address of the official or agent of the Department filing the lien; and (3-30-07)
- c. A brief description of the medical assistance received by the participant; and (3-30-07)
- d. The amount paid by the Department, as of a given date, and, if applicable, a statement that the amount of the lien will increase as long as medical assistance benefits are paid on behalf of the participant. (3-30-07)

**408. Renewal of Lien Imposed During Lifetime of Participant.** The lien, or any extension thereof, must be renewed every five (5) years by filing a new verified statement as required in Subsection ~~900.14~~ 903.07 of this rule, or as required by Idaho law. (~~3-30-07~~)(7-1-10)T

**409. Termination of Lien Imposed During Lifetime of Participant.** The lien will be released as provided by Idaho Code, upon satisfaction of the Department's claim. The lien will dissolve in the event of the participant's discharge from the medical institution and return home. Such dissolution of the lien does not discharge the underlying debt and the estate remains subject to recovery under estate recovery provisions in ~~Subsections 900.14 through 900.30~~ 904 and 905 of ~~this~~ these rules. (~~3-30-07~~)(7-1-10)T

**4904. LIENS AND ESTATE RECOVERY - REQUIREMENTS FOR ESTATE RECOVERY.**

**01. Estate Recovery Requirements.** In accordance Sections 56-218 and 56-218A, Idaho Code, the Department is required to recover the following: (~~3-30-07~~)(7-1-10)T

- a. The costs of all medical assistance correctly paid on or after July 1, 1995, on behalf of a participant who was permanently institutionalized; (3-30-07)
- b. The costs of medical assistance correctly paid on behalf of a participant who received medical assistance at age fifty-five (55) or older on or after July 1, 1994; and (3-30-07)
- c. The costs of medical assistance correctly paid on behalf of a participant who received medical assistance at age sixty-five (65) or older on or after July 1, 1988. (3-30-07)

**4502. Recovery From Estate of Spouse.** Recovery from the estate of the spouse of a Medicaid participant may be made as permitted in Sections 56-218 and 56-218A, Idaho Code. (3-30-07)

**4603. Lien Imposed Against Estate of Deceased Participant.** Liens may be imposed against the estates of deceased Medicaid participants and their spouses as permitted by Section 56-218, Idaho Code. (3-30-07)

**4704. Notice of Estate Claim.** The Department will notify the authorized representative of the amount of the estate claim after the death of the participant, or after the death of the surviving spouse. The notice must include instructions for applying for an undue hardship waiver. (3-30-07)

**4805. Assets in Estate Subject to Claims.** The authorized representative will be notified of the

Department's claim against the assets of a deceased participant. Assets in the estate from which the claim can be satisfied must include all real or personal property that the deceased participant owned or in which he had an ownership interest, including the following: (3-30-07)

**a.** Payments to the participant under an installment contract will be included among the assets of the deceased participant. This includes an installment contract on any real or personal property to which the deceased participant had a property right. The value of a promissory note, loan or property agreement is its outstanding principal balance at the date of death of the participant. When a promissory note, loan, or property agreement is secured by a Deed of Trust, the Department may request evidence of a reasonable and just underlying debt. (3-30-07)

**b.** The deceased participant's ownership interest in an estate, probated or not probated, is an asset of his estate when: (3-30-07)

**i.** Documents show the deceased participant is an eligible devisee or donee of property of another deceased person; or (3-30-07)

**ii.** The deceased participant received income from property of another person; or (3-30-07)

**iii.** State intestacy laws award the deceased participant a share in the distribution of the property of another estate. (3-30-07)

**c.** Any trust instrument which is designed to hold or to distribute funds or property, real or personal, in which the deceased participant had a beneficial interest is an asset of the estate. (3-30-07)

**d.** Life insurance is considered an asset when it has reverted to the estate. (3-30-07)

**e.** Burial insurance is considered an asset when a funeral home is the primary beneficiary or when there are unspent funds in the burial contract. Any funds remaining after payment to the funeral home will be considered assets of the estate. (3-30-07)

**f.** Checking and savings accounts which hold and accumulate funds designated for the deceased participant, are assets of the estate, including joint accounts which accumulate funds for the benefit of the participant. (3-30-07)

**g.** In a conservatorship situation, if a court order under state law specifically requires funds be made available for the care and maintenance of a participant prior to his death, absent evidence to the contrary, such funds are an asset of the deceased participant's estate, even if a court has to approve release of the funds. (3-30-07)

**h.** Shares of stocks, bonds and mutual funds to the benefit of the deceased participant are assets of the estate. The current market value of all stocks, bonds and mutual funds must be proved as of the month preceding settlement of the estate claim. (3-30-07)

~~406.~~ **Value of Estate Assets.** The Department will use fair market value as the value of the estate assets. (3-30-07)

**905. LIENS AND ESTATE RECOVERY - LIMITATIONS AND EXCLUSIONS.**

**201. Limitations on Estate Claims.** Limits on the Department's claim against the assets of a deceased participant or spouse are subject to Sections 56-218 and 56-218A, Idaho Code. A claim against the estate of a spouse of a participant is limited to the value of the assets of the estate that had been, at any time after October 1, 1993, community property, or the deceased participant's share of the separate property, and jointly owned property. Recovery will not be made until the deceased participant no longer is survived by a spouse, a child who is under age twenty-one (21), or a blind or disabled child, as defined in 42 U.S.C. 1382c as amended and, when applicable, as provided in Subsection ~~900.09~~ 903.05 of ~~the~~ these rules. No recovery will be made if the participant received medical assistance as the result of a crime committed against the participant. (~~3-30-07~~)(7-1-10)T

~~202.~~ **Expenses Deducted From Estate.** The following expenses may be deducted from the available

assets to determine the amount available to satisfy the Department's claim: (3-30-07)

**a.** Burial expenses, which include only those reasonably necessary for embalming, transportation of the body, cremation, flowers, clothing, and services of the funeral director and staff may be deducted. (3-30-07)

**b.** Other legally enforceable and necessary debts with priority may be deducted. The Department's claim is classified and paid as a debt with preference as defined in Section 15-03-805, Idaho Code. Debts of the deceased participant that may be deducted from the estate prior to satisfaction of the Department's claim must be legally enforceable debts given preference over the Department's claim under Section 15-03-805, Idaho Code. (3-30-07)

**2203. Interest on Claim.** The Department's claim does not bear interest except as otherwise provided by statute or agreement. (3-30-07)

**2304. Excluded Land.** Restricted allotted land, owned by a deceased participant who was an enrolled member of a federally recognized American Indian tribe, or eligible for tribal membership, which cannot be sold or transferred without permission from the Indian tribe or an agency of the Federal Government, will not be subject to estate recovery. (3-30-07)

**2405. Marriage Settlement Agreement or Other Such Agreement.** A marriage settlement agreement or other such agreement which separates assets for a married couple does not eliminate the debt against the estate of the deceased participant or the spouse. Transfers under a marriage settlement agreement or other such agreement may be voided if not for adequate consideration. (3-30-07)

**2506. Release of Estate Claims.** The Department will release a claim when the Department's claim has been fully satisfied and may release its claim under the following conditions: (3-30-07)

**a.** When an undue hardship waiver as defined in Subsection ~~900.26~~ 905.07 of this rule has been granted; or ~~(3-30-07)~~(7-1-10)T

**b.** When a written agreement with the authorized representative to pay the Department's claim in thirty-six (36) monthly payments or less has been achieved. (3-30-07)

**2607. Purpose of the Undue Hardship Exception.** The undue hardship exception is intended to avoid the impoverishment of the deceased participant's family due to the Department exercising its estate recovery right. The fact that family members anticipate or expect an inheritance, or will be inconvenienced economically by the lack of an inheritance, is not cause for the Department to declare an undue hardship. (3-30-07)

**2708. Application for Undue Hardship Waiver.** An applicant for an undue hardship waiver must have a beneficial interest in the estate and must apply for the waiver within ninety (90) days of the death of the participant or within thirty (30) days of receiving notice of the Department's claim, whichever is later. The filing of a claim by the Department in a probate proceeding constitutes notice to all heirs. (3-30-07)

**2809. Basis for Undue Hardship Waiver.** Undue hardship waivers will be considered in the following circumstances: (3-30-07)

**a.** The estate subject to recovery is income-producing property that provides the primary source of support for other family members; or (3-30-07)

**b.** Payment of the Department's claim would cause heirs of the deceased participant to be eligible for public assistance; or (3-30-07)

**c.** The Department's claim is less than five hundred dollars (\$500) or the total assets of the entire estate are less than five hundred dollars (\$500), excluding trust accounts or other bank accounts. (3-30-07)

**d.** The participant received medical assistance as the result of a crime committed against the participant. (3-30-07)

**2910. Limitations on Undue Hardship Waiver.** Any beneficiary of the estate of a deceased participant may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully, because of undue hardship. An undue hardship does not exist if action taken by the participant prior to his death, or by his legal representative, divested or diverted assets from the estate. The Department grants undue hardship waivers on a case by case basis upon review of all facts and circumstances, including any action taken to diminish assets available for estate recovery or to circumvent estate recovery. (3-30-07)

**3011. Set Aside of Transfers.** Transfers of real or personal property of the participant without adequate consideration are voidable and may be set aside by the district court whether or not the asset transfer resulted, or could have resulted, in a period of ineligibility. (3-30-07)

**906. LIENS AND ESTATE RECOVERY - REQUEST FOR NOTICE.**

**01. Request for Notice - Notice - Hearing.** The Department must notify the participant or his authorized representative, in writing, of its intention to record a request for notice, and that he has the right to a fair hearing in accordance with Subsection 900.02 of these rules. The notice must inform the participant of the following information, at a minimum: (7-1-10)T

**a.** The Department's determination that he is the record titleholder or purchaser under a land sale contract of real property subject to a request for notice; (7-1-10)T

**b.** He or his authorized representative may request a fair hearing prior to the Department's recording a request for notice. The notice must include the time limits and instructions for requesting a fair hearing; and (7-1-10)T

**c.** If he or his authorized representative does not request a fair hearing within the time limits specified, a request for notice applying to his real property, including his home, may be recorded. (7-1-10)T

**02. Request for Notice - Forms.** The request for notice, the notice of transfer or encumbrance, and the termination of request for notice may be found on the Department's website at [http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=ifI4\\_ujyrco%3d&tabid=123&mid=1158](http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=ifI4_ujyrco%3d&tabid=123&mid=1158). The request for notice must include, at a minimum, the following information: (7-1-10)T

**a.** The name of the public assistance recipient and the spouse of such public assistance recipient, if any; (7-1-10)T

**b.** The Medicaid number for the public assistance recipient and spouse, if any; (7-1-10)T

**c.** The legal description of the real property affected or to be affected; (7-1-10)T

**d.** The mailing address at which the Department is to receive notice as provided in Section 902 of these rules; (7-1-10)T

**e.** If the document is a Notice of Transfer or Encumbrance, the name and address of the transferee or lien holder; and (7-1-10)T

**f.** A fully executed acknowledgement as required for recording under Section 55-805, Idaho Code. (7-1-10)T

~~907.~~ -- 909. (RESERVED).

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1002**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of these temporary rules are September 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to 56-202(b), Idaho Code, and 2010 Legislation under House Bill 701, the Medicaid appropriations budget.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

***SPECIAL NOTE:** Department staff will be available at the hearing site for a question and answer session about the Non-Emergency Medical Transportation rule changes beginning at 2:00 p.m. The Public Hearing will begin promptly at 2:30 p.m.*

**Friday, August 13, 2010 at 2:00 p.m.**

**Region IV Health & Welfare Office  
1720 Westgate Drive  
Suite A, Room 131  
Boise, 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 and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department of Health and Welfare is implementing a selective contract system for the federally mandated non-emergency medical transportation services based on legislative intent for controlling costs, while improving quality and sustaining access. These rules provide the non-emergency medical transportation requirements for a transportation brokerage system for Medicaid participants who have no other means to receive Medicaid-covered services.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary for compliance with deadlines in amendments to governing law.

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

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

The estimated cost avoidance for the remaining 10 months for state fiscal year 2011 using a non-emergency medical transportation brokerage contractor is \$940,775. Of this amount, \$188,155 would be state general funds, and \$752,620 would be federal funds using the current federal match rate.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet Medicaid's appropriations budget adopted by the 2010 Legislature under House Bill 701.

**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, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sara Stith at (208) 287-1173.

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 August 25, 2010.

DATED this 16th day of July, 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  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0309-1002**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History Check.** Criminal history checks are required for certain types of providers under these rules. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (3-30-07)

**02. Availability to Work or Provide Service.** (3-30-07)

**a.** The employer, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. (3-30-07)

**b.** Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (3-30-07)

**03. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction. (3-30-07)

**04. Providers Subject to Criminal History Check Requirements.** The following providers must receive a criminal history clearance: (3-30-07)

**a.** Mental Health Clinics. The criminal history check requirements applicable to mental health clinic

staff are found in Subsection 714.05 of these rules.

(3-30-07)

**b.** ~~Commercial Contracted Non-Emergency Medical Transportation Providers. The criminal history check requirements applicable to commercial non-emergency~~ All staff of transportation providers are found in having contact with participants must comply with IDAPA 16.05.06, "Criminal History and Background Checks," with the exception of individual contracted transportation providers defined in Subsection 8740.05 of these rules.

~~(3-30-07)~~(9-1-10)T

**c.** Substance Abuse Treatment Providers. The criminal history check requirements applicable to substance abuse treatment providers are found in Section 694 of these rules.

(5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**870. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES -- DEFINITIONS.**

For the purposes of Sections 870 through 879 of these rules, the following definitions apply.

(9-1-10)T

**01. Commercial Contracted Transportation Provider.** ~~A commercial transportation provider is an entity in the business of transportation that is organized to provide, that publicly holds itself out to provide, and that actually provides personal transportation services to the general public. By "holding itself out" to the general public, the provider vigorously and diligently solicits riders from the general populace, as opposed to primarily serving riders from one (1) or more congregate living facilities. By "actually providing" services to the general public, the provider's riders include substantial numbers of persons whose travel is funded by a source other than Medicaid. A non-emergency medical transportation provider who is under contract with the transportation broker to provide non-emergency medical transportation for Medicaid participants.~~

~~(3-30-07)~~(9-1-10)T

**02. Individual Contracted Transportation Provider.** An individual who is under contract with the transportation broker to provide non-emergency medical transportation for a Medicaid participant in the provider's personal vehicle.

(9-1-10)T

**023. Non-Commercial Emergency Medical Transportation Provider.** ~~Any Non-emergency medical transportation provider that does not meet the definition of a commercial transportation provider is a non-commercial transportation provider that is:~~

~~(3-30-07)~~(9-1-10)T

**a.** Not of an emergency nature; and

(9-1-10)T

**b.** Required for a Medicaid participant to access medically necessary services covered by Medicaid when the participant's own transportation resources, family transportation resources, or community transportation resources do not allow the participant to reach those services.

(9-1-10)T

**034. Agency Transporters.** ~~Agency transporters are entities that provide transportation as well as at least one other service to one or more Medicaid participants. Individual transporters are non-commercial providers who transport a family member, acquaintance or other person in a personal vehicle. Transportation Broker. An entity under contract with the Department to administer, coordinate, and manage a statewide network of non-emergency medical transportation providers.~~

~~(3-30-07)~~(9-1-10)T

**05. Travel-Related Services.** Travel-related services are meals, lodging, and attendant care required for non-emergency medical transportation to be completed for a Medicaid participant.

(9-1-10)T

**871. (RESERVED) NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES -- DUTIES OF THE TRANSPORTATION BROKER.**

The transportation broker under contract with the Department is required to:

(9-1-10)T

**01. Coordinate and Manage.** Coordinate and manage all non-emergency medical transportation services for Medicaid participants statewide.

(9-1-10)T

**02. Contract With Transportation Providers.** Contract with transportation providers throughout the state to provide non-emergency medical transportation services for Medicaid participants. (9-1-10)T

**03. Call Center.** Operate a call center to receive and review non-emergency medical transportation for Medicaid participants meeting the requirements in Section 872 of these rules. (9-1-10)T

**04. Authorize Non-emergency Medical Transportation Services.** Authorize non-emergency medical transportation services for Medicaid participants requesting transportation and who meet the requirements in Section 872 of these rules. (9-1-10)T

**05. Reimburse Contracted Transportation Providers.** Reimburse contracted transportation providers for non-emergency medical transportation services meeting the requirements in Section 872 of these rules. (9-1-10)T

**06. Safe and Professional Transportation.** Assure that contracted transportation providers deliver non-emergency medical transportation services in a safe and professional manner. (9-1-10)T

**872. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES -- COVERAGE AND LIMITATIONS.**

**01. General Coverage for Non-Emergency Medical Transportation Services.** ~~Non-emergency transportation is all transportation that is not of an emergency nature, including non-medical transportation under waiver programs. An emergency is a condition described in Section 861 of these rules. Medicaid~~ The transportation broker will reimburse contracted transportation providers for non-emergency medical transportation ~~by commercial or non-commercial transportation providers services~~ under the following ~~circumstances and limitations~~ conditions: (3-30-07)(9-1-10)T

**a.** The travel is essential to get to or from a medically necessary Medicaid covered service ~~or a waiver service covered by Medicaid;~~ (3-30-07)(9-1-10)T

**b.** ~~The person for whom services are billed is actually transported for all the distance billed;~~ (3-30-07)

**eb.** The mode of transportation is the ~~lowest in least~~ least costly ~~to the Medicaid program~~ that is appropriate ~~to~~ for the medical needs of the participant; (3-30-07)(9-1-10)T

**ed.** The transportation is to the nearest medical ~~or waiver service~~ provider appropriate to perform the needed services, and transportation is by the most direct route practicable. ~~Reimbursement will be limited to the distance of the most direct route practicable; and~~ (3-30-07)(9-1-10)T

**ed.** Other modes of transportation, including personal vehicle, assistance by family, friends, and charitable organizations, are unavailable or impractical under the circumstances; ~~and~~ (3-30-07)(9-1-10)T

**fe.** The travel is authorized ~~by the Department prior to the transportation.~~ and scheduled by the transportation broker; ~~and~~ (3-30-07)(9-1-10)T

**f.** The contracted transportation provider is in compliance with the terms of its contract with the transportation broker. (9-1-10)T

**02. Exceptions.** ~~Despite the preceding rules, Medicaid will cover transportation services under the following circumstances:~~ (3-30-07)

**a.** ~~Transportation services may be retroactively approved when a participant is found retroactively eligible, the transportation service falls within the period of retroactive eligibility, and the transporter was a Medicaid transportation provider at the time of the transport for which reimbursement is sought.~~ (3-30-07)

~~**b.** For Subsection 872.02 of this rule, a trip is the distance a transporter carries a participant in the course of a day. Therefore, the total mileage of a round trip transport that takes place within one (1) day will be considered in determining whether this exception applies. Even though prior approval is not required, the transporter shall maintain all records as described in Subsection 874.02 of these rules. This exception is not available to commercial providers. (3-30-07)~~

~~**i.** Agency Transporters. If the trip distance is less than twenty-one (21) miles per day, prior approval for non-commercial non-waiver transport is not necessary. (3-30-07)~~

~~**ii.** Individual Transportation Providers. If the trip distance is less than two hundred (200) miles one-way or four hundred (400) miles roundtrip per day, prior approval for non-commercial non-waiver transport is not necessary. (3-30-07)~~

~~**e.** Non-Emergency transportation for Medicaid participants who are also eligible for Medicare ("dual eligibles") when they require transportation to pick up their medications covered under Medicare, Part D. (3-30-07)~~

~~**03.** **Services Incidental to Travel.** Medicaid will reimburse for the reasonable cost actually incurred of meals, lodging, a personal assistant and other necessary services incidental to travel, only as described in Section 873 and Subsection 875.02 of these rules. (3-30-07)~~

~~**04.** **Non-Commercial Transportation Provider.** Non-commercial transportation services may be performed by an agency or by an individual provider. If the Medicaid participants being transported are also participants of the transportation provider for services such as residential care, mental health, developmental therapy or other services, the provider will be considered a non-commercial provider with respect to those participants, even if the provider otherwise qualifies as a commercial transporter. A provider will be considered non-commercial with respect to any Medicaid participants transported if those participants are being transported to or from another service in which the provider has any ownership or control or if the arrangement to provide transportation is not an arm's length transaction. (3-30-07)~~

~~**05.** **Hardship Exception for Non-Commercial Transportation Providers.** The Department may grant an exception on the basis of hardship. The provider must submit information to show at minimum that its reasonable costs of vehicle operation exceed the applicable reimbursement rate. In evaluating requests for exception, the Department will consider factors such as alternative forms of services and transportation available in the area, the cost of alternatives, the appropriateness of the vehicles utilized and the benefit to participants. Special consideration may be given to any provider servicing the area through a grant from the Federal Transit Administration. The Department may limit the exception including the amount of additional reimbursement, the type of services to which transportation is being provided, and the time duration of the exception. (3-30-07)~~

~~**06.** **Out-of-State Transport.** If payment is requested for transportation costs to receive the out-of-state medical care, the Department will determine if appropriate, comparable medical care is available closer to the participant's residence. If such care is available, the Department will limit authorization to payment for transportation costs associated with a trip to the closer location. If it is determined necessary and appropriate for the medical care to be rendered at the out-of-state location, then the Department will authorize payment for transportation costs associated with a trip to the out-of-state location. Reimbursement for transportation costs to receive out-of-state medical care requires prior authorization. (3-30-07)~~

~~**02.** **Travel-Related Services.** The transportation broker will reimburse a contracted transportation provider for travel-related services under the following circumstances: (9-1-10)T~~

~~**a.** The reasonable cost of meals actually incurred in transit will be reimbursed for the participant when there is no other practical means of obtaining food. (9-1-10)T~~

~~**b.** The reasonable cost for lodging actually incurred for the participant will be reimbursed when: (9-1-10)T~~

~~**i.** The round trip and the needed medical service cannot be completed in the same day; and (9-1-10)T~~

- ii. No less costly alternative is available. (9-1-10)T
- c. The reasonable cost of wages for an attendant will be reimbursed when: (9-1-10)T
  - i. An attendant is medically necessary or when the vulnerability of the participant requires accompaniment for safety; and (9-1-10)T
  - ii. No family member or other unpaid attendant is available to accompany the participant. (9-1-10)T
  - d. The reasonable cost of meals actually incurred in transit will be reimbursed for one (1) family member or one (1) attendant, when: (9-1-10)T
    - i. Attendant care is medically necessary or when the vulnerability of the participant requires accompaniment for safety; and (9-1-10)T
    - ii. There is no other practical means of obtaining food. (9-1-10)T
    - e. The reasonable cost of lodging actually incurred will be reimbursed for one (1) family member or one (1) attendant when: (9-1-10)T
      - i. An overnight stay is required to receive the service; (9-1-10)T
      - ii. It is medically necessary or the vulnerability of the participant requires accompaniment for safety; (9-1-10)T
    - and
    - iii. No less costly alternative is available. (9-1-10)T

**873. ~~Non-Emergency Transportation Services: Procedural Requirements.~~**

~~Authorization for the travel reimbursement must be requested from the Department at least twenty four (24) hours in advance of the travel excluding Saturdays, Sundays, and state holidays, unless one of the exceptions described in Subsection 872.02.a. or Subsection 872.02.b. of these rules applies.~~ (3-30-07)

**874. ~~Non-Emergency Transportation Services: Provider Qualifications And Duties.~~**

~~01. **Commercial Transportation Providers.** Each commercial transportation provider must, at minimum, meet the following standards:~~ (3-30-07)

~~a. Maintain all certifications and licenses for drivers and vehicles required by all public transportation laws, regulations, ordinances that apply to the transportation provider.~~ (3-30-07)

~~b. Adhere to all laws, rules and regulations applicable to transportation providers of that type, including those requiring liability insurance. Liability insurance will be carried in an amount to cover at least five hundred thousand dollars (\$500,000) personal injury and five hundred thousand dollars (\$500,000) property damage per occurrence.~~ (3-30-07)

~~e. Enter into a Medicaid provider agreement and enrollment application.~~ (3-30-07)

~~d. Each commercial provider must maintain the following records for a minimum of five (5) years:~~ (3-30-07)

~~i. Prior authorization documents.~~ (3-30-07)

~~ii. Name of participant and Medicaid ID number.~~ (3-30-07)

~~iii. Date, time, and geographical point of pick up for each participant trip.~~ (3-30-07)

- ~~iv. Date, time, and geographical point of drop-off for each participant trip. (3-30-07)~~
- ~~v. Identification of the vehicle(s) and driver(s) transporting each participant on each trip, and total miles for the trip. (3-30-07)~~
- ~~e. Verify that all staff having contact with participants have complied with IDAPA 16.05.06, "Criminal History and Background Checks." (3-30-07)~~

~~**02. Non-Commercial Transportation Providers.** Each non-commercial transportation provider must, at minimum, meet the following standards: (3-30-07)~~

~~**a.** Continuously maintain liability insurance that covers passengers. For agency providers, coverage must be at least one hundred thousand (\$100,000) per individual and three hundred thousand (\$300,000) each incident. Individual providers must carry at least the minimum liability insurance required by Idaho law. If an agency permits employees to transport participants in employees' personal vehicles, the agency must ensure that adequate insurance coverage is carried to cover those circumstances. (3-30-07)~~

~~**b.** Obtain and maintain all licenses and certifications required by government to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. (3-30-07)~~

~~**c.** Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. (3-30-07)~~

~~**d.** Enter into a Medicaid enrollment application and provider agreement. (3-30-07)~~

~~**e.** Records. Each non-commercial transportation provider must, at the time of transport, collect the following information, and must maintain it for a minimum of five (5) years: (3-30-07)~~

~~i. Participant name and Medicaid ID number for each trip. (3-30-07)~~

~~ii. Date, time, geographical point of pick up and odometer reading at pick up for each participant trip. (3-30-07)~~

~~iii. Date, time, geographical point of drop off and odometer reading at drop off for each participant trip. (3-30-07)~~

~~iv. Mileage each participant was transported for each trip billed. (3-30-07)~~

~~v. Identification of the vehicle and driver transporting each participant on each trip. (3-30-07)~~

~~vi. Notice of prior authorization, when required. (3-30-07)~~

~~**875. Non-Emergency Transportation Services: Provider Reimbursement.**~~

~~**01. Submission of Transportation Claims.** All transportation claims must be on a CMS 1500 Claim form and must include a trip related authorization number where prior authorization is required. Payment must not be made in advance of the service being rendered. (3-30-07)~~

~~**02. Claims for Travel-Related Services.** All claims for travel related services must be supported by receipts, or other verification of the date, place, the amount of and the nature of services that were performed. Medicaid will not pay for claimed services that are not verifiable by contemporaneous documentation. (3-30-07)~~

~~**a.** Travel covered by the service to which the participant is being transported is not reimbursable as a separate service; and (3-30-07)~~

~~**b.** Transportation is paid on a reimbursement basis only; payment will not be issued prior to delivery~~

~~of the service.~~

~~(3-30-07)~~

~~**e.** The reasonable cost of meals actually incurred in transit will be approved when necessary, when there is no other practical means of obtaining food, and only when an overnight stay is required to receive the service. Reimbursement must not exceed seven dollars (\$7) per meal or a maximum of twenty one dollars (\$21) per day per person.~~

~~(3-30-07)~~

~~**d.** The reasonable cost actually incurred for lodging will be approved when the round trip and the needed medical service, in practicality, can not be completed in the same day. The travel must entail a one (1) way distance of at least two hundred (200) miles, or a normal one (1) way travel time of at least four (4) hours. The incidental travel expenses of a family member or other companion will be covered when medical necessity or the vulnerability of the individual requires accompaniment for safety, and no less costly alternative is available. Lodging reimbursement will not be paid when the stay is in the home of a relative or acquaintance.~~

~~(3-30-07)~~

~~**03. Commercial Transportation.** A statewide uniform payment rate must be established through a study conducted no less frequently than each third year, that evaluates the actual charges of, and costs reasonably incurred by the typical commercial transportation provider, together with the reasonable administrative costs incurred by the typical provider in keeping records for Medicaid related transportation and billing the Department.~~

~~(3-30-07)~~

~~**04. Non-Commercial Providers—Agency and Individual.**~~

~~(3-30-07)~~

~~**a.** Agency Provider Reimbursement. A statewide uniform payment rate must be established through a study conducted no less frequently than each third year, that evaluates the actual costs reasonably incurred by the typical agency transportation provider, together with the reasonable administrative costs incurred by the typical agency transportation provider in keeping records for Medicaid related transportation and billing the Department.~~

~~(3-30-07)~~

~~**b.** Individual Provider Reimbursement. A uniform payment rate must be established through a study conducted no less frequently than each third year, that evaluates the actual costs of fuel reasonably incurred by the typical non-commercial transportation provider whose personal vehicle averages fifteen (15) miles per gallon.~~

~~(3-30-07)~~

~~8763. -- 879. (RESERVED).~~