

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Dept. Of Health & Welfare: IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits (Docket No. 16-0310-1001).

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 6-22-10. 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 7-21-10.

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:** April 27, 2010  
(June 3, 2010 mailing delay is due to LSO waiting for new GEMS computer Program to be installed to process rules & is not yet complete)

**SUBJECT:** Department of Health and Welfare - IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits (Docket No. 16-0310-1001) (Temporary and Proposed)

This temporary and proposed rule docket 16-0310-1001 (hereinafter "proposed rule") represents the Department of Health and Welfare's amendments to chapter 16.03.10 dealing with Medicaid enhanced plan benefits. The Governor's justification for the temporary rule is to protect the public health, safety or welfare, which is one of the justifications provided for in section 67-5226(1), Idaho Code. The temporary rule was effective on January 1, 2010.

According to the Department, the proposed rule is authorized pursuant to sections 56-202(b), 56-203(g) and (i), and 56-250 through 56-257, Idaho Code, and pursuant to 42 CFR 441.303(e).

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority. Section 56-203(g), Idaho Code, grants the Department the power to define persons entitled to medical assistance in such terms as will meet requirements for federal participation in medical assistance payments. Section 56-203(i), Idaho Code, empowers the Department to determine the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals.

Sections 56-250 through 56-255, Idaho Code, are the codified provisions of the Idaho Medicaid Simplification Act (HB 776 (2006)). Part of the legislative intent of that Act is to strive to balance efforts to contain Medicaid costs, improve program quality and improve access to services. Section 56-251(1), Idaho Code. Section 56-253(8), Idaho Code, gives the

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Department's director the authority to promulgate rules consistent with that Act. Sections 56-256 and 56-257, Idaho Code, deal with Personal Health Accounts and co-payments, respectively, and are not relevant to the present proposed rule.

Forty-two CFR section 441.303(e) requires the Department to furnish the Centers for Medicare and Medicaid Services (CMS) with an explanation of how it will apply the applicable provisions regarding the post-eligibility treatment of income and resources of those individuals receiving home and community-based services (HCBS) who are eligible under a special income level.

According to the Department, there is no anticipated fiscal impact to the state general fund by the proposed rule. Negotiated rulemaking was not conducted because the rule changes are being made to align the rule with federal regulations and requirements. A public hearing will be held if requested in writing by twenty-five persons, a political subdivision or an agency not later than May 19, 2010. All written comments must be delivered on or before May 26, 2010.

### **ANALYSIS**

The sole change in the proposed rule is broadening the conditions when a participant is required to participate in the cost of HCBS. Under the proposed rule a participant must simply be eligible under all the AABD Medicaid requirements in order to participate in the cost of HCBS, rather than having an income that exceeds the AABD Medicaid income limit eligibility requirement. Those AABD Medicaid requirements include a resource limit, a cost of services requirement, a time requirement and an annual limit. See IDAPA 1603.05.787 (HCBS under the Department's Rules Governing Eligibility to Aid to the Aged, Blind and Disabled).

### **SUMMARY**

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

cc: Department of Health and Welfare  
Tamara Prisock & Susan Scheuerer

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1001

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code, and 42 CFR 441.303(e).

**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 May 19, 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:

In order to safeguard the provision of services under the HCBS waiver programs, the current rules are being aligned with both federal regulations and the CMS-approved HCBS waiver requirements.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it is necessary to protect the public health, safety, or welfare.

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

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to align the rules with federal regulations and requirements.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Susan Scheuerer at (208) 287-1156.

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 May 26, 2010.

DATED this 1st day of April, 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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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0310-1001

**020. PARTICIPATION IN THE COST OF WAIVER SERVICES.**

**01. Waiver Services and Income Limit.** A participant is not required to participate in the cost of Home and Community Based (HCBS) waiver services unless: (3-19-07)

**a.** The participant's eligibility for medical assistance is based on approval for and receipt of a waiver service; and (3-19-07)

**b.** The participant's ~~income exceeds the eligibility requirement under the HCBS income limit contained in~~ is eligible for Medicaid if he meets the conditions referred to under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 787. (~~3-19-07~~)(1-1-10)T

**02. Waiver Cost-Sharing.** Participation in the cost of HCBS waiver services is determined as described in IDAPA 16.03.18, "Medicaid Cost-Sharing." (3-19-07)