

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 16.05.06 - Criminal History and Background Checks (Docket #16-0506-1001);

16.05.06 - Criminal History and Background Checks (Docket #16-0506-1002) Fee
Rule.

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
8-4-10. 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 9-1-10.

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: July 16, 2010

SUBJECT: Department of Health and Welfare - IDAPA 16.05.06 - Criminal History and Background Checks, Docket Nos. 16-0506-1001 (Temporary and Proposed) and 16-0506-1002 (Temporary and Proposed Fee)

Through temporary and proposed rule Docket No. 16-0506-1001 (hereinafter “proposed rule”), the Department of Health and Welfare seeks to provide consistency and clarity to its various rules dealing with criminal history and background checks, to update the list of disqualifying crimes and to identify certain registries that qualify for unconditional denial status. Through temporary and proposed fee rule Docket No. 16-0506-1002 (hereinafter “fee rule”), the Department seeks to add a fee to cover administrative costs to check the Idaho Child Protection Central Registry for states investigating an individual who is applying to become a foster parent or adoptive parent.

According to the Department, the proposed rule and the fee rule are authorized by section 56-1004A, Idaho Code. In addition, the Department states that the fee rule is authorized by 42 USC section 16961.

Section 56-1004A, Idaho Code, specifically deals with criminal history and background checks. That section authorizes the Department “to conduct criminal history and background checks of individuals who provide care or services to vulnerable adults or children and are identified in rule as being required to have a criminal history and background check.” The Department is specifically required to promulgate rules “to further define those individuals who are required to have a background check,” to define the time frame for submitting the application, and to “determine which crimes disqualify the applicant and for what period of

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time.” The section anticipates that fingerprinting will be part of the criminal history and background check process. The applicant is responsible for the cost of the background check. Forty-two USC section 16961 deals with access to national crime information databases.

The Governor’s justification for the temporary rule is to protect the safety of children and vulnerable adults from individuals who may harm them. This justification fits within the “protection of the public health, safety, or welfare” justification for temporary rules allowed by section 67-5226(1)(a), Idaho Code. In compliance with section 67-5226(2), Idaho Code, the Governor has found that the temporary fee rule is necessary to protect children from immediate danger. The temporary rule went into effect on May 1, 2010 and July 1, 2010. The temporary fee rule went into effect on July 1, 2010.

According to the Department, the fee amount for providing the Idaho Child Protection Central Registry checks is based on costs incurred to complete the check and the amount to be charged to other states is \$20 per check. The Department estimates that approximately 840 registry checks will generate \$16,900 in additional revenue to the dedicated fund for fiscal year 2011. No General Fund impact is anticipated by either the proposed or the fee rule. The Department states that negotiated rulemaking was not conducted because the proposed rule and the fee rule are necessary to protect the public health, safety or welfare and to comply with governing law. In addition, the fee rule was necessary to comply with governing law.

Public hearings will be held if requested by in writing by 25 persons, a political subdivision or an agency not later that July 21, 2010. All written comments must be directed to the Department on or before July 28, 2010.

ANALYSIS

Four changes to definitions are made by the proposed rule. A purpose statement in the “criminal history and background check” definition (“to determine the suitability of the individual to provide care or services to vulnerable adults or children”) is removed. Section 010.04. This removal broadens the scope of the definition. The provision that a relevant record may result in a conditional denial has been removed from the definition of “relevant record,” now defined as “a record that is from criminal records or from agencies checked by the Department as provided in section 56-1004A, Idaho Code.” Section 010.13. Under the proposed rule, a relevant record is included in the definition of “unconditional denial.” Section 010.06.b. Finally, “good cause” has been redefined as “substantial reason, one that affords a legal excuse,” rather than the deleted reasonable prudent person standard. Section 010.11.

A small but significant change has been made to section 061, regarding employer responsibilities. The word “even” has been inserted in the subsection on employment determination to require the employer to review the results of the criminal history and background check “even” if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. Section 061.03.

Section 100 of the docket redefines who is required to complete a criminal history and background check pursuant to statute or Department rules. For each of the 25 categories (e.g., adoptive parent applicants, certified family homes, emergency medical services, etc.), the proposed rule requires that the “individual” who must comply with the applicable Idaho Code section or Department rule complete the check, rather than specific categories (e.g., all adults in the home, staff, volunteers, employees, etc.). The Department explains that this change is required since, currently, some of the individuals and providers listed in the chapter are not consistent with the Department rules that require the background check. The applicable statute or Department rule becomes the authority on who is required to complete the check under the proposed rule.

The fee rule adds new section 125 on Idaho Child Protection Central Registry Checks. The preface of this rule is that under federal law, a check of this registry may be requested by another state for foster or adoptive placement cases. The fee rule provides how the request is to be transmitted, lists what information must be included in the request and imposes a \$20 fee. Under the fee rule, the Department will return a response within 14 days.

Section 200 on unconditional denials clarifies the role of relevant records. Reasons for an unconditional denial under the proposed rule include a relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding and a relevant record on the Nurse Aide Registry. Section 200.01.b and c.

The proposed rule adds sections 18-909, Idaho Code (list of crimes - an assault on another with intent to commit murder, rape, infamous crime against nature, mayhem, robbery, lewd and lascivious conduct with a minor child - classified as an assault with intent to commit a serious felony) and 18-911, Idaho Code (list of crimes - a battery on another with the intent to commit murder, rape, infamous crime against nature, mayhem, robbery, lewd and lascivious conduct with a minor child - classified as a battery with intent to commit a serious felony), to the list of disqualifying crimes that will result in an unconditional denial being issued. Section 210.01.j. With regard to disqualifying five-year crimes, the proposed rule deletes a list of specific felonies and inserts the catchall: “any felony not described in subsection 210.01 of this rule, which contains an extensive listing. Section 210.a. Added to the disqualifying five-year crime listing is stalking in the second degree (section 18-7906, Idaho Code), a misdemeanor. Section 210.g. Except for the added stalking crime, misdemeanors under section 210 are appropriately labeled as such by the proposed rule.

Section 230 deletes all references to “conditional” denials, although section 220 continues to refer to conditional denials. Under the proposed rule, section 230 addresses relevant records resulting in a denial. The proposed rule clarifies that a negative finding on the Nurse Aide Registry may be the basis for a denial. Sections 230.01.e and 230.02.b.

SUMMARY

The Department's proposed rule and fee rule appear to be authorized by and are consistent with section 56-1004A, Idaho Code.

cc: Department of Health and Welfare:
Tamara Prisock & Steve Bellomy

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATES: The effective dates of these temporary rules are May 1, 2010, and 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 temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 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:

The criminal history and background check (CHC) rules provide a list of individuals and providers required to have a CHC. The CHC rules reference other Department rules and statutes requiring certain individuals to meet the CHC requirements. Currently, some of the individuals and providers listed in this chapter are not consistent with the Department rules that require the background check. In order to clarify the distinction between the Department's program rules and the Department's CHC rules, these CHC rules are being amended to reference only those Department rules that require an individual to have a criminal history and background check.

The Department's list of disqualifying crimes, and unconditional denials that prevent a person from receiving a CHC clearance is being updated. The Department is changing these rules to state that an individual listed on the Nurse Aide and Child Protection Central registries will receive unconditional denials. The 5-year disqualifying crimes list is amended to encompass additional crimes to better protect children and vulnerable adults.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reason:

To protect the safety of children and vulnerable adults from individuals who may harm them.

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:

There is no anticipated fiscal impact to the state general fund due to this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to protect the public health, safety, or welfare.

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 Steve Bellomy (208) 334-0609.

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 July 28, 2010.

DATED this 27th day of May, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0506-1001

010. DEFINITIONS AND ABBREVIATIONS.

01. Application. An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

02. Clearance. A clearance issued by the Department once the criminal history and background check is completed and no disqualifying crimes or relevant records are found. (3-26-08)

03. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

a. When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)

b. When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)

c. When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)

d. When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)

i. When the individual has entered into participation in a drug court; or (3-26-08)

ii. When the individual has entered into participation in a mental health court. (3-26-08)

04. Criminal History and Background Check. A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records ~~to determine the suitability of the individual to provide care or services to vulnerable adults or children.~~ (3-26-08)(7-1-10)T

05. Criminal History Unit. The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)

06. Denial. A denial is issued by the Department when an individual has a relevant record or

disqualifying crime. There are two (2) types of denials: (3-26-08)

a. Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)

b. Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. ~~(3-26-08)~~(7-1-10)T

07. Department. The Idaho Department of Health and Welfare or its designee. (3-26-08)

08. Disqualifying Crime. A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)

09. Exemption Review. A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)

10. Federal Bureau of Investigation (FBI). The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

11. Good Cause. ~~The facts and circumstances that would compel a reasonably prudent person to act in the same or similar manner under the same or similar circumstances~~ Substantial reason, one that affords a legal excuse. ~~(3-26-08)~~(7-1-10)T

12. Idaho State Police Bureau of Criminal Identification. The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)

13. Relevant Record. A relevant record is a record that is from criminal records or from registries checked by the Department as provided in Section 56-1004A, Idaho Code, ~~that may result in a conditional denial.~~ ~~(3-26-08)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

061. EMPLOYER RESPONSIBILITIES.

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for employment as described in Subsections 061.01 through 061.03 of these rules. (3-26-08)

01. Screen Applicants. The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. (3-26-08)

02. Ensure Time Frames Are Met. The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. (3-26-08)

03. Employment Determination. The employer is responsible for reviewing the results of the criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. ~~(3-26-08)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or ~~program~~ Department rules to complete a criminal history and background check.

~~(3-26-08)~~(7-1-10)T

01. Adoptive Parent Applicants. ~~All persons applying to the Department or petitioning the court to be an adoptive parent and all adults in the home, except stepparents applying for adoption of a stepchild, as described in Individuals who must comply with IDAPA 16.06.01, “Rules Governing Child and Family and Children’s Services,” and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.”~~

~~(3-29-10)~~(7-1-10)T

02. Alcohol or Substance Use Disorders Treatment Facilities and Programs. ~~Staff, contractors, volunteers, student interns, and others assigned to programs who have direct contact with children and vulnerable adults, as defined in Section 39-5302, Idaho Code, and as required by IDAPA 16.06.03, “Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs,” or Individuals who must comply with IDAPA 16.07.20, “Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs,” and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.”~~

~~(3-29-10)~~(5-1-10)T

03. Certified Family Homes. ~~Certified family home providers, all adults in the home, and substitute caregivers, as required in Individuals who must comply with Section 39-3520, Idaho Code, and IDAPA 16.03.19, “Rules Governing Certified Family Homes,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.”~~

~~(3-29-10)~~(7-1-10)T

04. Children's Residential Care Facilities. ~~Owners, operators, and employees of all children's residential care facilities, as required in Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.”~~

~~(3-29-10)~~(7-1-10)T

05. Children's Therapeutic Outdoor Programs. ~~Staff, volunteers, and interns working in Children's Therapeutic Outdoor Programs, as defined in Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.”~~

~~(3-29-10)~~(7-1-10)T

06. Commercial Non-Emergency Transportation Providers. ~~Staff of commercial non-emergency transportation providers who have contact with participants, as required in Individuals who must comply with IDAPA 16.03.09, “Medicaid Basic Plan Benefits.”~~

~~(3-29-10)~~(7-1-10)T

07. Designated Examiners and Designated Dispositioners. ~~Individuals seeking appointment as a designated examiner or designated dispositioner, or both, as required in who must comply with IDAPA 16.07.39, “Appointment of Designated Examiners and Designated Dispositioners.”~~

~~(3-29-10)~~(7-1-10)T

08. Developmental Disabilities Agencies. ~~Employees, subcontractors, agents, and volunteers of developmental disabilities agencies, as required in Individuals who must comply with IDAPA 16.04.11, “Rules Governing Developmental Disabilities Agencies,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.”~~

~~(3-29-10)~~(7-1-10)T

09. Emergency Medical Services (EMS). ~~Applicants for EMS certification, as required in Individuals who must comply with IDAPA 16.02.03, “Rules Governing Emergency Medical Services.”~~

~~(3-29-10)~~(7-1-10)T

10. Home and Community-Based Services (HCBS). ~~Providers, employees, and contractors for home and community-based services, as required in Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.”~~

~~(3-29-10)~~(7-1-10)T

11. Home Health Agencies. ~~Employees and contractors of home health agencies, as required in Individuals who must comply with IDAPA 16.03.07, “Home Health Agencies.”~~

~~(3-29-10)~~(7-1-10)T

12. Idaho Child Care Program (ICCP). ~~ICCP applicants, providers, employees, volunteers,~~

~~including those in group child care, family child care, relative child care, in-home child care, and individuals age thirteen (13) or older living in the home, who have direct contact with children, as required in~~ Individuals who must comply with IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." ~~(3-29-10)(7-1-10)T~~

13. Intermediate Care Facilities for the Mentally Retarded (ICF/MR). ~~Employees and contractors of intermediate care facilities for the mentally retarded, as required in~~ Individuals who must comply with IDAPA 16.03.11, "Intermediate Care Facilities for the Mentally Retarded (ICF/MR)." ~~(3-29-10)(7-1-10)T~~

14. Licensed Foster Care. ~~All foster care applicants and other adult members of the household, as required in~~ Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~(3-29-10)(7-1-10)T~~

15. Licensed Day Care. ~~Applicants, owners, operators, employees, volunteers, and those over twelve (12) years of age who have unsupervised direct contact with the children of day care centers, group day care facilities and family day care homes, as required in~~ Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~(3-29-10)(7-1-10)T~~

16. Mental Health Clinics. ~~Mental health clinic's direct care staff, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ~~(3-29-10)(7-1-10)T~~

17. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. ~~Owners, operators, and all employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide care or services or have access to clients, as required in~~ Individuals who must comply with IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units." ~~(3-29-10)(7-1-10)T~~

18. Personal Assistance Agencies. ~~Staff of personal assistance agencies acting as fiscal intermediaries, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

19. Personal Care Service Providers. ~~Providers of personal care services, as required in~~ Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

20. Psychosocial Rehabilitation Providers. ~~Individuals providing psychosocial rehabilitation services, as required in~~ who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

21. Residential Care or Assisted Living Facilities in Idaho. ~~Employees and contractors of residential care or assisted living facilities, as required in~~ Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." ~~(3-29-10)(7-1-10)T~~

22. Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill. ~~Employees and contractors of semi-independent group residential care facilities for the developmentally disabled or mentally ill, as required in~~ Individuals who must comply with IDAPA 16.03.15, "Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill." ~~(3-29-10)(7-1-10)T~~

23. Service Coordinators and Paraprofessional Providers. ~~Service coordinators and paraprofessionals working for an agency, as required in~~ Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-29-10)(7-1-10)T~~

24. Skilled Nursing and Intermediate Care Facilities. ~~Employees and contractors of skilled nursing and intermediate care facilities, as required in~~ Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." ~~(3-29-10)(7-1-10)T~~

25. Support Brokers and Community Support Workers. ~~Support brokers and community support workers, as required in~~ Individuals who must comply with IDAPA 16.03.13, "Consumer-Directed Services." ~~(3-29-10)~~(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial~~Issuance~~. Unconditional denials are issued for: (7-1-10)T

a. ~~Disqualifying crimes described in Section 210 of these rules;~~ (3-26-08)(7-1-10)T

b. A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; or (7-1-10)T

c. A relevant record on the Nurse Aide Registry. (7-1-10)T

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has thirty (30) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with: ~~The Criminal History Unit, 3268 Elder Street, Boise, ID 83705~~ described in Section 005 of these rules. (3-26-08)(7-1-10)T

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Final Order. The Department's final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. (3-26-08)

201. -- 209. (RESERVED).

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes described in Subsections 210.01.a through 210.01.v. of these rules will result in an unconditional denial being issued. (3-26-08)

a. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code;

- (3-26-08)
- b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
 - c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
 - d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
 - e.** Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
 - f.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
 - g.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
 - h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
 - i.** Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
 - j.** Murder in any degree, ~~voluntary~~ manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections ~~18-909, 18-911,~~ 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; ~~(3-26-08)~~(7-1-10)T
 - k.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
 - l.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
 - m.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
 - n.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
 - o.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
 - p.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
 - q.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
 - r.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
 - s.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
 - t.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)
 - u.** Any felony punishable by death or life imprisonment; or (3-26-08)
 - v.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~q.~~h. of this rule: ~~(3-29-10)~~(7-1-10)T

- a.** ~~Aggravated assault, as defined in Section 18-905, Idaho Code~~ Any felony not described in

Subsection 210.01, of this rule; ~~(3-26-08)~~(7-1-10)T

- ~~b.~~ *Aggravated battery, as defined in Section 18-907(1), Idaho Code;* ~~(3-26-08)~~
- ~~c.~~ *Arson in the third degree, as defined in Section 18-804, Idaho Code;* ~~(3-26-08)~~
- ~~d.~~ *Burglary, as defined in Section 18-1401, Idaho Code;* ~~(3-26-08)~~
- ~~e.~~ *Felony computer crimes, as defined in Section 18-2202, Idaho Code;* ~~(3-29-10)~~
- ~~f.~~ *A felony involving a controlled substance;* ~~(3-26-08)~~
- ~~g.~~ *Felony domestic violence, as defined in Section 18-918, Idaho Code;* ~~(3-29-10)~~
- ~~h.~~ *Any felony lottery crime as defined in Section 67-7448, Idaho Code;* ~~(3-29-10)~~
- ~~i.~~ *Felony theft, as defined in Section 18-2403, Idaho Code;* ~~(3-26-08)~~
- ~~j.~~ Misdemeanor Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; ~~(3-29-10)~~(7-1-10)T
- ~~k.~~ Misdemeanor Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; ~~(3-26-08)~~(7-1-10)T
- ~~l.~~ *Grand theft, as defined in Section 18-2407(1), Idaho Code;* ~~(3-26-08)~~
- ~~m.~~ Misdemeanor fidentity theft, as defined in Section 18-3126, Idaho Code; ~~(4-9-09)~~(7-1-10)T
- ~~n.~~ Misdemeanor finsurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; ~~(3-26-08)~~(7-1-10)T
- ~~o.~~ Misdemeanor Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; ~~(4-9-09)~~(7-1-10)T
- ~~p.~~ *Attempted strangulation, as defined in Section 18-923, Idaho Code; or* ~~(4-9-09)~~
- ~~g.~~ Stalking in the second degree, as defined in Section 18-7906, Idaho Code. ~~(7-1-10)T~~
- ~~q.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. ~~(3-29-10)~~

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: ~~(3-26-08)~~

- a.** A withheld judgment; ~~(3-26-08)~~
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; ~~(3-26-08)~~
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or ~~(3-26-08)~~
- d.** A sealed record. ~~(3-26-08)~~

(BREAK IN CONTINUITY OF SECTIONS)

230. RELEVANT RECORDS RESULTING IN A ~~CONDITIONAL~~ DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on his record as described Subsections 230.01 and 230.02 of this rule. (3-26-08)

01. Individuals Licensed or Certified by the Department or a Department Employee. A ~~conditional~~ denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.f. of this rule: ~~(3-26-08)~~(7-1-10)T

- a. A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license; (3-26-08)
- b. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)
- c. The Department determines there is a potential health and safety risk to vulnerable adults or children; (3-26-08)
- d. The individual has falsified or omitted information on the application form; (3-26-08)
- e. The individual is ~~listed with a finding~~ on the Nurse Aide Registry with a negative finding; or ~~(3-26-08)~~(7-1-10)T
- f. The Department determines additional information is required. (3-26-08)

02. Employees of Providers or Contractors. A ~~conditional~~ denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.c. of this rule. ~~(3-26-08)~~(7-1-10)T

- a. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)
- b. The individual is ~~listed with a finding~~ on the Nurse Aide Registry with a negative finding; or ~~(3-26-08)~~(7-1-10)T
- c. The Department determines additional information is required. (3-26-08)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a. A withheld judgment; (3-26-08)
- b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d. A sealed record. (3-26-08)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1002 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule 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 temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1004A, Idaho Code, and 42 USC 16961 Section 152.

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 July 21, 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:

The Department is required to check the Idaho Child Protection Central Registry when requested by another state when an individual applies to become a foster parent or adoptive parent. Each state is required to check its child abuse registry when an individual has resided in the state within the past five years. Because of budgetary constraints, the Department is adding a fee to cover the administrative costs that occur when these checks are provided. This rule provides the guidelines and fee for an Idaho Child Protection Central Registry Check.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a)(b), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reasons:

This temporary fee rule is needed to protect children from immediate danger.

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:

The fee amount for providing the Idaho Child Protection Central Registry checks is based on costs incurred to complete each check. The fee amount to be charged to other states is \$20 per check.

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 Department estimates that approximately 840 registry checks will generate \$16,900 in additional revenue to the dedicated fund for SFY 2011, and will have no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to protect the public health, safety, or welfare, and to comply with governing law.

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 Steve Bellomy (208) 334-0609.

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 July 28, 2010.

DATED this 27th day of May, 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

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0506-1002

121. -- 124. (RESERVED).

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

Under the provisions in 42 USC 16961 Section 152, a check of the Idaho Child Protection Central Registry may be requested by another state for foster or adoptive placement cases. (7-1-10)T

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted by mail, facsimile transmission, or e-mail attachment on state letterhead with the requesting authority contact information, and must include the following: (7-1-10)T

a. Name of the subject of the check, and any aliases; (7-1-10)T

b. Date of birth and Social Security Number of the subject of the check; and (7-1-10)T

c. A notarized signature of the subject of the check authorizing the request. (7-1-10)T

02. Fee Amount. The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. (7-1-10)T

03. Department Response. A response will be returned to the state initiating the request for the check within fourteen (14) days of receipt of the request. The Department's contact information will be included along with the result of the check. (7-1-10)T

126. -- 129. (RESERVED).