

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Dept. of Health & Welfare:

IDAPA 16.06.01 - Family and Children's Services (Docket No. 16-0601-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the co-chairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-26-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-24-10.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

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

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

DATE: October 6, 2010

SUBJECT: Department of Health and Welfare - IDAPA 16.06.01 - Family and Children's Services (Docket No. 16-0601-1001)(Proposed)

By this Proposed Rule docket, the Department of Health and Welfare amends Idaho Administrative Code chapter 16.06.01 (Docket No. 16-0601-1001)(hereinafter "proposed rule"), dealing with the rules governing child and family services.

In order to bring this rule chapter into compliance with the Department's title IV-E state plan, the Department states that the proposed rule addresses relative guardianship assistance to provide for a permanent living situation with a relative for older children and details the requirements of the Multiethnic Placement Act. The Department states that the Fostering Connections to Success and Increasing Adoptions Act of 2008 has changed eligibility for title IV-E adoption assistance and could result, within the next eight years, in a greatly expanded number of adopted children eligible for adoption assistance subsidies. Therefore, the rule is being clarified as to who is eligible to receive an adoption subsidy, based on need. The proposed rule also brings the chapter into alignment with current practices regarding: contact requirements for foster children in out-of-state care; replacement of risk-oriented language with safety-oriented language; and the removal of requirement for parent signature on the alternate care plan. Finally, the category of "professional foster care" is being replaced with an actual dollar amount that establishes the maximum adoption assistance for children in foster care who are eligible for personal care services. The Department states that this will simplify the foster care rate structure and reduce confusion for foster care parents.

According to the Department, both proposed rule dockets are authorized by: sections 16-1629, 56-202(b), 56-204A, 56-803, and 56-1003, Idaho Code; title IV, parts B and E of the Social Security Act, as amended by P.L. 110-351; and title IV, part E of the Social Security Act, section 475(a)(18)(A) and (B), as amended by P.L. 103-382 and codified at 42 U.S.C. 622. The

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Department has failed to provide copies of the referenced federal law as required by section 67-5223(1), Idaho Code.

Section 16-1629, Idaho Code, is part of the Child Protective Act, and provides the powers and the duties of the Department thereunder, including maintaining a central registry for reporting child neglect, abuse and abandonment information and establishing appropriate administrative procedures for processing complaints of child neglect, abuse and abandonment. Section 56-202(b), Idaho Code, requires the Department's director to promulgate, adopt and enforce such rules and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code, dealing with public assistance and welfare. Section 56-204A, Idaho Code, requires the Department to adopt appropriate rules related to children's services. Section 56-803, Idaho Code, places upon the Department the responsibility for establishing and implementing the Hard-to-Place Children Act, pursuant to rules promulgated by the Board of Health and Welfare. Section 56-1003, Idaho Code, provides powers and duties to the Department's director in the area of public health.

According to the Department, no fee or charge is imposed, decreased or increased by the proposed rules and there is no impact on the state General Fund. The Department states that negotiated rulemaking was not conducted because the purpose of the proposed rule is to bring it into alignment with the Department's title IV-E state plan and applicable federal regulations. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than September 15, 2010. The Department will accept written comments through September 22, 2010.

ANALYSIS

Some changes are substantive while others are stylistic. Universally, "risk assessment" becomes "ongoing assessment" or "safety assessment," "assure" becomes "ensure," and "risk" is replaced by "safety." The greatest change is the distinction between federally-funded guardianship assistance and state-funded guardianship assistance. Minor changes will not be addressed herein.

A. Definitions

Four new definitions are provided: "Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA)," "federally-funded guardianship assistance for relatives," "relative guardian," and "state-funded guardianship assistance." "Federally-funded guardian assistance for relatives" and "state-funded guardian assistance" replaces the deleted "guardianship assistance." Five definitions are modified: "case management," "desired result," "Intercountry Adoption Act of 2000 (P.L. 106-279)," "legal guardian," and "responsible party." Of these, "legal guardian" evinces the greatest substantive change, with the elimination of information such as "intended to be permanent and self-sustaining," a list of duties being transferred to the guardian, and the

requirement that the child be in the guardianship of the Department at the time the petition of legal guardianship is filed.

“Safety assessment” replaces “the deleted “immediate safety assessment,” with minor changes in wording (“a process and standardized tool” replaces “standardized protocol”). This change in terminology is reflected throughout the proposed rule. One definition, “child and family services,” has been moved to its proper alphabetical placement. Sections 010, 011 and 013.

B. Guardian Assistance

As noted above, the distinction between federal and state funded guardianship assistance forms a major component of the proposed rule. The general conditions for federal-funded or state-funded guardianship assistance are found in revised section 702. These conditions include: determination of suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study; the determination of eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship; the requirement that the potential legal guardian receive a foster care license; and a written agreement between the Department and the prospective legal guardian containing specified information. Sections 702.01 through 04.

Benefits may include both a monthly cash payment and Medicaid benefits. Cash payment may not exceed the published Idaho foster care rate. Eligibility for guardianship assistance is based on the child’s needs. No means test may be applied to the prospective legal guardian family’s income or resources in determination of eligibility. Section 702.04.

Guardianship assistance benefits automatically terminate under specified conditions, including: when a court terminates the legal guardianship or removes the legal guardian; the child no longer resides in the legal guardian’s home and the legal guardian no longer provides financial support for the child; the child reaches age 18; and the child marries or enters the military. Section 702.05. Administrative review pursuant to Department rule must be requested within 28 days of the Department’s notification of guardianship assistance determination. Section 702.06.

The requirements for federally-funded guardianship assistance are set forth in new section 703. Eligibility criteria include: age 14 years or older within a specified time frame; removal from the home pursuant to a voluntary placement agreement or as a result of a judicial determination; return to the home or adoption are not appropriate permanency options; eligibility for Title IV-E foster care maintenance payments during six consecutive months; consultation regarding the legal guardianship arrangement; a demonstrated strong attachment to the prospective relative legal guardian; and a strong commitment to caring permanently for the child by the relative legal guardian. Section 703.01.

Guardianship assistance payments may be made on behalf of each sibling of an eligible child under age 18 who is placed with the same relative. A sibling does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment. Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's sibling up to \$2,000 may be available. Section 703.02. The guardian assistance eligible child is also eligible for Title XIX Medicaid. Section 703.03. The eligible child's case plan must include specific information. Section 703.04. The prospective legal guardian and other adult members of the household must receive a criminal history and background check clearance pursuant to Department rule. Section 703.05. The Department will reimburse the cost of nonrecurring expenses associated with obtaining a federally-funded legal guardianship up to \$2,000. Section 703.06.

Additional state-funded guardian assistance requirements and benefits are provided for in new section 704. Assistance is based on the child's identified needs. The child's parents must have had their parental rights legally terminated and there is documentation of unsuccessful efforts to place the child for adoption. Section 704.01. Assistance may include Medicaid benefits, but such benefits may only be used in Idaho. Section 704.03. Financial assistance may be available to help pay the legal fees required for the potential legal guardian to obtain legal guardianship. Section 704.04.

C. Other Substantive Provisions

The proposed rule notes that the Multiethnic Placement Act of 1994 has been amended by the Interethnic Adoption Provisions of 1996 and summarizes the provisions of those enactments, including: prohibitions on delaying or denying foster care or adoptive placement on the basis of race, color or national origin; a requirement that states diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of children; and a reminder that failure to comply with these prohibitions is a violation of the 1964 Civil Rights Act. Section 050.11.

The proposed rule requires that when a child is placed in a state that requires only face-to-face contact every six months, the responsible party in Idaho must contact the child and the child's caregiver each month by phone to confirm the child's safety and well-being. Section 405.05.e. The Department must complete a written alternate care plan within 30 days of alternate care placement and at least every six months thereafter. A copy of the alternate care plan must be provided to the child's parent, legal guardian, foster parent, Indian custodian, tribe and the child (if over 12 years of age). Additional requirements regarding the alternate care plan have been deleted by the proposed rule. Section 422.02.

The proposed rule does not require that a comprehensive assessment be completed within 30 days of initial contact with the child of concern. The proposed rule does provide that the case remain open and a comprehensive assessment must be completed when there are safety threats identified in the safety assessment. Section 559.04.

The definition of “special needs” in the adoption assistance program has been modified to specify that the child’s physical, mental, emotional or medical disability or potential disability is based on the child’s experience of documented physical, emotional or sexual abuse and the child is being placed for adoption with at least one sibling. Section 900.02.b and d.

The proposed rule specifies that payments received for treatment foster care, gifts, clothing and school fees are not considered part of the family foster care rate. The proposed rule also provides that the maximum treatment foster care rate is a maximum \$1,000 per month. Section 910.02.

SUMMARY

The Department’s proposed rule appears to be authorized by sections 56-202(b) and 56-204A, Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock & Kathy Morris

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 56-202(b), and 56-1003, Idaho Code; Section 56-803, Idaho Code, re: adoption and guardian assistance; Title IV, Parts B and E of the Social Security Act, as amended by Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) re: guardianship assistance; and Title IV, Part E of the Social Security Act, Section 475(a)(18)(A)&(B) as amended by the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (P.L. 103-382, 42 U.S.C. 622).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order to bring these rules into compliance with the Department's Title IV-E State Plan, rules are being added that:

(1) Address Title IV-E relative guardianship assistance in order to provide for a permanent living situation with a relative for older children, and (2) further detail the requirements of the Multiethnic Placement Act (MEPA).

The Fostering Connections to Success and Increasing Adoptions Act of 2008 has changed eligibility for Title IV-E adoption assistance. Within the next eight years (2010-2018), those changes could greatly expand the number of adopted children eligible for adoption assistance subsidies. As a result, it is being clarified in rule who is eligible to receive an adoption subsidy, so those children who are most in need will continue to be able to receive assistance.

In order to bring the rules into alignment with current practice, (1) the rules regarding contact requirements for foster children in out-of-state care are being clarified, (2) risk-oriented language in rule is being replaced with safety-oriented language, and (3) the requirement for parent signature on the alternate care plan is being removed from rules.

Since the category of "professional foster care" has been eliminated from rule, the Department is replacing this term with an actual dollar amount that establishes the maximum adoption assistance for children in foster care who are eligible for personal care services. This will simplify the foster care rate structure and reduce confusion for foster parents.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: 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 related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. These rule changes are being made to bring the rules into alignment with the Department's Title IV-E State Plan and applicable federal regulations.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules under this docket.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 4th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0601-1001

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

For the purposes of these rules, the following terms are used: (5-8-09)

01. **Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA).** Federal law whose purpose is to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. ()

02. **Adoption Assistance.** Funds provided to adoptive parent(s) of a child who has special needs or who could not be adopted without financial or medical assistance. (5-8-09)

03. **Adoption Services.** Protective services through which a child is provided with a permanent home, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (5-8-09)

04. **Alternate Care.** Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment, and institutional resources, under the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act, 25 U.S.C. Sections 1901-1963. (5-8-09)

05. **Alternate Care Plan.** A federally-required component of the Family Plan for a child in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, the child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical, and other information important to the day-to-day care of the child. (5-8-09)

06. **Area of Concern.** Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. (3-30-07)

07. **Assessment.** The first step in the planning process, the outcome of which is the systematic documentation of the family's areas of concern, their strengths, and desired outcomes. (3-30-07)

08. **Board.** The Idaho State Board of Health and Welfare. (3-18-99)

089. Case Management. A change-oriented service to families that ~~ass~~ensures and coordinates the provision of family ~~risk~~ ongoing assessment, family service planning, treatment, planning for permanency, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (5-8-09)(____)

0910. Certified Adoption Professional (formerly “qualified individual”). An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

11. Child and Family Services. Those programs and services provided to families and children, administered by the Department in accordance with these rules. (____)

102. Child Protection. All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter must be served without regard to income. (3-30-07)

143. Child Protective Services. Services provided in response to potential, alleged, or actual abuse, neglect, or abandonment of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the “Child Protective Act.” (5-8-09)

124. Compact Administrator. The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; “Interstate Compact on the Placement of Children,” Section 16-1901 et seq., Idaho Code; or the “Interstate Compact on Adoption and Medical Assistance,” Section 39-7501 et seq., Idaho Code. (5-8-09)

135. Daycare for Children. Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child’s or children’s own home or homes. (3-18-99)

146. Department. The Idaho Department of Health and Welfare. (3-18-99)

157. Deprivation. One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. (3-30-07)

168. Desired Result. Behaviorally-specific description of how the family circumstances will look when the ~~risk~~ safety factors that brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-07)(____)

179. Director. The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

1820. Extended Family Member of an Indian Child. As defined by the law, or custom of an Indian child’s tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.
For the purposes of these rules, the following terms are used: (5-8-09)

01. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

02. Child and Family Services. ~~Those programs and services directed to families and children,~~

administered by the Department and provided in accordance with these rules.

(5-8-09)

032. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

043. Family Case Record. Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

054. Family (Case) Plan. Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

065. Family Services Worker. Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

06. Federally-Funded Guardianship Assistance for Relatives. Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. ()

07. Field Office. A Department of Health and Welfare service delivery site. (3-18-99)

08. Goal. A statement of the long term outcome or plan for the child and family. (3-18-99)

~~**09. Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (3-30-07)~~

~~**10. Immediate Safety Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further Child and Family Services response. (5-8-09)~~

~~**109. Independent Living.** Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)~~

120. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

131. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe, or (3-18-99)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

142. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

153. Indian Child's Tribe. (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1)

tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

164. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

175. Intercountry Adoption Act of 2000 (P.L. 106-279). Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

186. Interethnic Adoption Provisions of 1996 (IEPA). IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (5-3-03)()

197. Interstate Compact on the Placement of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

2018. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Legal Guardianship. A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative ~~caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights.~~ (5-3-03)()

02. Licensed. Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-30-07)

03. Licensing. See IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 100. (3-30-07)

04. Medicaid. See "Title XIX." (3-30-01)

05. Multiethnic Placement Act of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

06. Parent. A person who, by birth or through adoption, is considered legally responsible for a child. The term "legal guardian" is not included in the definition of parent. (5-8-09)

07. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

08. Personal Care Services (PCS). Services to eligible Medicaid recipients that involve personal and

medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

09. P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)

10. P.L. 105-89. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

11. Planning. An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

12. Qualified Expert Witness--ICWA. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child-rearing practices; (3-18-99)

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; (3-18-99)

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community; or (3-18-99)

d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

13. Relative. Person related to a child by blood, marriage, or adoption. (3-30-01)

14. Relative Guardian. A relative who is appointed a child's legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. ()

145. Reservation. Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

156. Respite Care. Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a licensed or agency-approved caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

167. Responsible Party. ~~An individual such as a~~ Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. ~~(5-8-09)~~()

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.
For the purposes of these rules, the following terms are used: (5-8-09)

01. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

02. Safety Assessment. A process and standardized tool for contact between a family services worker and a family to objectively determine if safety threats, or immediate service needs exist that require further Child and

Family Services response. ()

023. Safety Plan. Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

04. State-Funded Guardianship Assistance. Benefits described in Subsection 702.04 and Section 704 of these rules provided to a legal guardian for the support of a child who meets the eligibility criteria. ()

035. TAFI. Temporary Assistance to Families in Idaho. (3-18-99)

046. Title IV-E. Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

057. Title IV-E Foster Care. Child care provided in lieu of parental care in a foster home, children's agency, or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (5-8-09)

068. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs." (3-18-99)

079. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

0810. Tribal Court. A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

0911. Unmarried Parents' Services. Services aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for any unmarried parents who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (5-8-09)

102. Voluntary Services Agreement. A written and executed agreement between the Department and parents or legal guardians regarding the goal, areas of concern, desired results, and task responsibility, including payment. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

030. CORE CHILD AND FAMILY SERVICES.

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

01. Crisis Services. Crisis Services are an immediate response to ~~ass~~ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess ~~risk~~ safety and place in alternate care, if necessary, to ~~ass~~ensure safety for the child. (5-8-09)()

02. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

03. Assessment and Safety/Service Planning Services. Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is

developed ~~together~~ by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (5-8-09)(_____)

04. Preventative Services. Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

05. Court-Ordered Services. These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

06. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, approved or specified by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (5-8-09)

07. Community Support Services. Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

08. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

09. Independent Living. Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

a. Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be fifteen (15) to nineteen (19) years of age; (5-8-09)

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

b. Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has

reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (5-8-09)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

c. Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

10. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

11. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

a. Child care licensing; (3-30-01)

b. Daycare licensing; (3-30-01)

c. Community development; and (5-8-09)

d. Contract development and monitoring. (5-8-09)

031. -- 049. (RESERVED).

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ~~ensure~~ ensure timely permanency for children and to protect the rights of children, their families and their tribes. (~~3-30-01~~)(____)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with ~~their~~ his family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (~~5-8-09~~)(____)

a. Efforts to prevent or eliminate the need for a child to be removed from his home; (5-8-09)

b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)

c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

02. Active Efforts. For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. (5-3-03)

03. ICWA Preferences. If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (3-18-99)

04. Least Restrictive Setting. Efforts will be made to ~~ensure~~ ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child.

~~(5-8-09)~~()

05. Legal Requirements for Indian Children. In the case of an Indian child, notice of the pending proceeding must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement.

(3-30-07)

06. Visitation for Child's Parent(s) or Legal Guardian(s). Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety.

(3-30-07)

07. Notification of Change in Placement. Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA.

(5-3-03)

08. Notification of Change in Visitation. Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care.

(5-3-03)

09. Notification of Right to Participate and Appeal. Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation.

(3-30-07)

10. ICWA Placement Preferences. Compliance with the foster care placement preferences of the Indian Child Welfare Act.

(3-18-99)

11. Compliance with Requirements of the Multiethnic Placement Act ~~and~~ of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996.

~~(3-30-01)~~()

a. MEPA/IEP prohibits states and other entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin.

()

b. MEPA/IEP prohibits these states and other entities from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin;

()

c. MEPA/IEP requires that, to remain eligible for federal assistance for their child welfare programs, states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes;

()

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests;

()

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and

()

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978.

()

- 12. Family Decision-Making and Plan Development.** (3-30-01)
- a.** A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)
- b.** Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)
- c.** Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)
- 13. Compelling Reasons.** Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)
- 14. ASFA Placement Preferences.** The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)
- a.** Return home if safe to do so; (3-30-01)
- b.** Adoption or legal guardianship by a relative or kin; (5-8-09)
- c.** Adoption or legal guardianship by non-relative; (3-30-01)
- d.** Another planned permanent living arrangement such as long-term foster care. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

405. ALTERNATE CARE CASE MANAGEMENT.

Case management must continue while the child is in alternate care and must ensure the following: (3-30-07)

01. Preparation for Placement. Preparing a child for placement in alternate care is the joint responsibility of the child's family, the child (when appropriate), the family services worker, and the alternate care provider. (3-30-07)

02. Information for Alternate Care Provider. The Department and the family must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (3-30-07)

- a.** Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (3-18-99)
- b.** The name of the child's doctor; (3-18-99)
- c.** The child's current functioning and behaviors; (3-18-99)

- d.** The child's history and past experiences and reasons for placement into alternate care; (3-30-01)
- e.** The child's cultural and racial identity; (3-18-99)
- f.** Any educational, developmental, or special needs of the child; (3-18-99)
- g.** The child's interest and talents; (3-18-99)
- h.** The child's attachment to current caretakers; (3-18-99)
- i.** The individualized and unique needs of the child; (3-18-99)
- j.** Procedures to follow in case of emergency; and (3-18-99)
- k.** Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

03. Consent for Medical Care. Parent(s) or legal guardian(s) must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. (3-30-07)

04. Financial Arrangements. The family services worker must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-30-07)

05. Contact with Child. The family, the family services worker, and the alternate care provider must establish a schedule for frequent and regular visits with the child by the family and by the family services worker or designee. (5-8-09)

a. Face-to-face contact with a child by the responsible party must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the responsible party and the child occurs where the child resides a minimum of once every sixty (60) days. (5-8-09)

b. The Department will have strategies in place to detect abuse, neglect, or abandonment of children in alternate care. (5-8-09)

c. Face-to-face contact between the responsible party and a child placed in an in-state group or residential care facility, located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (5-8-09)

d. Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures, and the use of video and other technology as may be relevant and available. (3-30-07)

e. Children who are in out-of-state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either. Idaho will request the state in which the child is placed to have face-to-face contact with the child on a monthly basis. If the policy of the state in which the child is placed allows only for face-to-face contact every six (6) months, the responsible party in Idaho will contact the child and the child's caregiver each month by phone to confirm the child's safety and well-being. (~~5-8-09~~)()

06. Discharge Planning. Planning for discharge from alternate care will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's

return home or to the community. (5-8-09)

07. Transition Planning. Planning for discharge from alternate care into a permanent placement will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-30-07)

08. Financial and Support Services. As part of the discharge planning, Departmental resources will be coordinated to expedite access to Department financial and medical assistance and community support services. (3-30-07)

406. -- 421. (RESERVED).

422. ALTERNATE CARE PLANNING.

The elements of ~~A~~alternate care planning ~~is~~ are mandated by the provisions of ~~Sections 471(a)(15) and 475, P.L. 96-272~~ Title IV-E, Sections 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act. (~~3-18-99~~)()

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

a. The purpose of the alternate care plan is to facilitate the safe return of the child to his ~~or her~~ own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (~~5-8-09~~)()

b. The alternate care plan must be included as part of the family service plan. (5-8-09)

02. Written Alternate Care Plan. The Department must ~~have~~ completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care and at least every six (6) months thereafter. A copy of the alternate care plan will be provided to the child's parent, legal guardian, foster parent, Indian custodian, tribe, and to the child if he is over twelve (12) years of age. (~~5-8-09~~)()

~~**a.** A parent or legal guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement.~~ (5-8-09)

~~**b.** The alternate care plan must include documentation that a parent or legal guardian have been provided written notification of:~~ (5-8-09)

~~**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule;~~ (3-18-99)

~~**ii.** Any change of placement, when the child is relocated to another alternate care or institutional setting immediately, and no later than seven (7) days after placement; and~~ (5-8-09)

~~**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements.~~ (3-30-01)

~~**e.** All parties involved in developing the alternate care plan, including the alternate care provider, parent or legal guardian, and the child, if of appropriate developmental age:~~ (5-8-09)

~~**i.** Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and~~ (5-8-09)

~~**ii.** Will receive a copy of the alternate care plan from the Department.~~ (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

553. ASSIGNING REPORTS FOR ~~RISK~~ SAFETY ASSESSMENT.

The Department must assign all reports of possible abuse, neglect, or abandonment of children for ~~risk~~ safety assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (5-8-09)(____)

(BREAK IN CONTINUITY OF SECTIONS)

555. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.

In all Priority I and II cases where the alleged victim of abuse, neglect, or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts will be conducted within forty-eight (48) hours of initiation of the ~~risk~~ safety assessment. Such review will be documented in the file with the signature of the supervisor or team leader, time and date, whether additional ~~risk~~ safety-related issues will be pursued and by whom, and any planning for initiation of services. (5-8-09)(____)

(BREAK IN CONTINUITY OF SECTIONS)

559. CHILD PROTECTION ~~IMMEDIATE~~ SAFETY AND COMPREHENSIVE ASSESSMENTS.

The Department's ~~immediate~~ safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) ~~or children~~ involved and the immediate family and a records check for history with respect to child protection issues. (3-30-07)(____)

01. Interview of a Child. The interview of a child concerning a child protection report must be conducted: (3-30-07)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview must: (3-30-07)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

b. Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

03. Collateral Interviews. Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral

interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

04. Completion of a Comprehensive Assessment. ~~An Immediate Protection/~~ Safety Plan Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When ~~there are findings of moderate or higher risk~~ safety threats are identified in the safety assessment and ~~the~~ case remains open for services, a comprehensive assessment must be completed ~~within thirty (30) days of initial contact with the child of concern.~~ (3-30-07)()

05. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

- a. Interviewing the alleged perpetrator; (3-18-99)
- b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)
- c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

06. Notification of the Person Who Made the Referral. The Department must notify the person who made the child protection referral when the ~~risk~~ safety assessment has been completed. (3-30-07)()

560. DISPOSITION OF CHILD PROTECTION REPORTS.

Within five (5) days following completion of ~~risk~~ safety assessments, the Department will determine whether the reports are substantiated or unsubstantiated. All persons who are the subject of a child protection ~~risk~~ safety assessment will be notified of the disposition of the assessment. (4-2-08)()

01. Substantiated. Child abuse, neglect, or abandonment reports are substantiated by one (1) or more of the following: (5-8-09)

- a. Witnessed by a family services worker, as defined in Section 011 of these rules; (4-2-08)
- b. A court determines, in an adjudicatory hearing, that a child comes within the jurisdiction of the Child Protective Act, Title 16, Chapter 16, Idaho Code; (5-8-09)
- c. A confession; (4-2-08)
- d. Corroborated by physical or medical evidence; or (4-2-08)
- e. Established by evidence that it is more likely than not that abuse, neglect, or abandonment occurred. (5-8-09)

02. Unsubstantiated. Child abuse, neglect, or abandonment reports are unsubstantiated when they are not found to be substantiated under Subsection 560.01 of this rule. For intradepartmental statistical purposes, the Department will indicate whether the unsubstantiated disposition of the ~~risk~~ safety assessment was due to: (5-8-09)()

- a. Insufficient evidence; or (5-3-03)
- b. An erroneous report. (4-2-08)

561. CHILD PROTECTION CENTRAL REGISTRY.

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, July 27, 2006, 120 Stat. 587, has directed the states to establish a central registry for the purpose of sharing information about persons who have substantiated

reports of abuse, neglect, or abandonment against children. The Child Protection Central Registry was established under the authority of Section 16-1629(3), Idaho Code. The primary purpose of the Child Protection Central Registry is to aid the Department in protecting children and vulnerable adults from individuals who have previously abused, neglected, or abandoned children. The Child Protection Central Registry maintained by the Department is separate and apart from the central registry for convicted sexual offenders maintained by the Idaho State Police under Title 18, Chapter 83, Idaho Code. The Child Protection Central Registry provisions in this chapter of rules apply to ~~risk~~ safety assessments conducted by the Department after October 1, 2007. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

568. COURT-ORDERED CHILD PROTECTION ~~RISK~~ SAFETY ASSESSMENT.

When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court may order that an investigation/~~risk~~ safety assessment be conducted by the Department. Court orders for preliminary child protective ~~risk~~ safety assessment and for any subsequent assessment the court may deem necessary will be served on the Department supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor must immediately initiate the ~~risk~~ safety assessment and consult with the court promptly if there are any obstacles ~~proceeding~~ preventing its completion. Immediately upon completing the report, the Department must make a written report to the court. (4-2-08)()

569. PETITION UNDER THE CHILD PROTECTIVE ACT.

If any incidence~~t~~ of child abuse, neglect, or abandonment is substantiated through an ~~immediate~~ safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department will request the prosecuting attorney to file a Child Protective Act petition. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

571. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.

Where no other community resources are available and when ordered by the district courts, the Department will, for a fee of thirty-five dollars (\$35) per hour, conduct ~~immediate~~ safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (3-30-07)()

01. Requests From Private Attorney. If a parent's attorney requests an ~~immediate~~ safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (3-30-07)()

02. Conduct of the Assessment. In conducting the assessment, the family services worker must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-30-07)

03. Report to Court. The family services worker will provide a report only to the Magistrate judge who ordered the assessment, and must use the Department's format for the assessment of need. The report must describe what was observed about the home conditions and the care of the child(ren). (3-30-07)

04. Department Clients. If the family is or has been a client of the Department, disclosure of information must comply with IDAPA 16.05.01, "Use and ~~Protection~~ Disclosure of Department Records."

(5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

702. ~~SERVICES TO BE PROVIDED IN LEGAL CONDITIONS FOR GUARDIANSHIPS ASSISTANCE.~~
~~In addition to the family services provided under these rules, the Department will provide the following: The following conditions must be met for a child to be eligible for federally-funded or state-funded guardianship assistance.~~ (5-8-09)()

01. ~~Preparation for Placement.~~ Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s). ~~Assessment of Suitability.~~ The Department or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study. (5-3-03)()

02. ~~Eligibility for Guardianship Assistance.~~ The Department will determine eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally-funded subsidy. Should the child be found ineligible for a federally-funded subsidy, the child will then be considered for a state-funded subsidy. ()

023. ~~Guardianship and Foster Care Licensure.~~ To receive guardianship assistance, a potential legal guardian(s) must apply for and receive a foster care license before any child in the guardianship of the Department can be placed in their home. (5-3-03)()

04. ~~Guardianship Assistance Agreements and Payments.~~ The Department and the prospective legal guardian must enter into a written agreement prior to the finalization of the guardianship. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate a child would receive if living in family foster care in Idaho. Eligibility for guardianship assistance is based on the child's needs. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. The Department will provide the prospective legal guardian with a copy of the agreement. All Guardianship Assistance Agreements must contain the following: ()

a. ~~The amount and manner in which the guardianship assistance payment will be provided to the prospective legal guardian;~~ ()

b. ~~The manner in which the payment may be adjusted periodically in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child;~~ ()

c. ~~Any additional services and assistance for which the child and legal guardian will be eligible under the agreement;~~ ()

d. ~~The procedure by which the legal guardian may apply for additional services;~~ ()

e. ~~A statement that the agreement will remain in effect without regard to the state of residency of the legal guardian;~~ ()

f. ~~The procedure by which the Department will make a mandatory annual evaluation of the need for continued assistance and the amount of the assistance; and~~ ()

g. ~~Guardianship assistance payments are prospective only. There will be no retroactive benefits or payments.~~ ()

03- ~~Financial Assistance to Obtain Guardianship.~~ For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial

~~assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence. (5-3-03)~~

~~**04. Eligibility for Guardianship Assistance.** A determination of eligibility for guardianship assistance must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. (3-30-07)~~

~~**05. Guardianship Assistance Agreement.** The region will negotiate a written guardianship assistance agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays. (3-30-07)~~

~~**06. Revocation of Legal Guardianship.** Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship. (5-3-03)~~

~~**07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s).** If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the military. (5-3-03)~~

~~**08. Retroactive Benefits.** Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship. (5-3-03)~~

05. Termination of Guardianship Assistance. Federally-funded or state-funded guardianship assistance benefits and cash payments are automatically terminated when:

a. A court terminates the legal guardianship or removes the legal guardian;

b. The child no longer resides in the home of the legal guardian, and the legal guardian no longer provides financial support for the child;

c. The child has reached the age of eighteen (18) years, regardless of the child's educational status or physical or developmental delays; or

d. The child marries, dies, or enters the military.

06. Administrative Review for Guardianship Assistance. The prospective legal guardian has twenty-eight (28) days from the date of the Department's notification of the guardianship assistance determination, to request an administrative review. The determination will be reviewed by the FACS Division Administrator, and a decision will be rendered to either affirm, reverse, or modify, the decision. The Department will notify the individual, by mail, of the FACS Division Administrator's decision, of his right to appeal, and procedures for filing an appeal according to requirements in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."

703. FEDERALLY-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENTS, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a federally-funded guardianship assistance for an eligible child and a relative guardian. ()

01. Eligibility. A child is eligible for a federally-funded guardianship if the Department determines the child meets the following: ()

a. Is fourteen (14) years of age, or older, sometime during the consecutive six- (6) month residence with the prospective relative legal guardian as specified in Subsection 703.01.c. of this rule; ()

b. Has been removed from his or her home pursuant to a voluntary placement agreement, or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; ()

c. Being returned home or adopted are not appropriate permanency options for the child; ()

d. Has been eligible for Title IV-E foster care maintenance payments during at least six (6) consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While it is not required that Title IV-E foster care maintenance payments have been paid on behalf of the child during the six-month timeframe, it is required the child meet all Title IV-E foster care maintenance payment eligibility criteria in the home of the fully licensed or approved relative foster parent for a consecutive six- (6) month period to be eligible for Title IV-E guardianship assistance payment with that prospective relative legal guardian; ()

e. Has been consulted regarding the legal guardianship arrangement; and ()

f. Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child. ()

02. Siblings of an Eligible Child. ()

a. The Department may make guardianship assistance payments in accordance with a guardianship assistance agreement on behalf of each sibling of an eligible child, under the age of eighteen (18), who is placed with the same relative under the same legal guardianship arrangement if the Department and the relative legal guardian agree that the placement is appropriate. ()

b. Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's siblings are available to the extent the total cost does not exceed two thousand dollars (\$2,000). ()

c. The agency is not required to place siblings with the relative legal guardian of the child at the same time with the eligible child for the siblings to qualify for a cash payment. ()

d. A sibling of the eligible child does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment or for the relative legal guardian to receive nonrecurring expenses. ()

03. Medicaid. A child who is eligible for federally-funded relative guardianship assistance is eligible for Title XIX Medicaid in the state where the child resides. ()

04. Case Plan Requirements. A child who is eligible for federally-funded relative guardianship assistance must have a case plan that includes: ()

a. How the child meets the eligibility requirements; ()

b. Steps the agency has taken to determine that return to the home or adoption is not appropriate; ()

c. The efforts the agency has made to discuss adoption with the child's relative foster parent and the reason why adoption is not an option; ()

d. The efforts the agency has made to discuss the legal guardianship and the guardianship assistance with the child's parent or parents, or the reason the efforts were not made; ()

e. The reason why a permanent placement with a prospective relative legal guardian and receipt of a guardianship assistance payment is in the child's best interests; and ()

f. If the child is not placed with siblings, a statement as to why the child is separated from his siblings. ()

05. Criminal History and Background Checks. To be eligible for a federally-funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary. ()

06. Nonrecurring Expenses. The Department will reimburse the cost, up to two thousand dollars (\$2,000), of nonrecurring expenses associated with obtaining a federally-funded legal guardianship for an eligible child. ()

704. STATE-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENT, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a state-funded guardianship assistance for an eligible child and his legal guardian. ()

01. Eligibility for State-Funded Guardianship Assistance. A child is eligible for a state-funded guardianship assistance if the Department determines the child meets the following: ()

a. Assistance is based on the child's identified needs; ()

b. The child's parents have had their parental rights legally terminated; and ()

c. There is documentation of unsuccessful efforts to place the child for adoption. ()

02. Limitations on State-Funded Guardianship Assistance. State-funded guardianship assistance is subject to state appropriations and availability of state general funds. ()

03. Medicaid Benefits Under State-Funded Guardianship Assistance. State-funded guardianship assistance may include Medicaid benefits for the child(ren) receiving payment. These Medicaid benefits may only be used in Idaho. If the legal guardian moves to another state, he will be required to apply for Medicaid for the child(ren) in the new state of residency. ()

04. Nonrecurring Expenses. In cases where state-funded guardianship assistance is being considered, if the potential legal guardian is not able to afford the attorney and court costs to obtain legal guardianship of a child in the legal custody of the Department of Health and Welfare, financial assistance may be available from the Department. Financial assistance for legal fees may be provided regardless of the legal guardian's state of residence. ()

7035. -- 709. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family. (3-30-01)
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
 - a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
 - b.** ~~The Multi Ethnic Placement Act and Interethnic Placement Act and regulations~~ The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, ~~which must include~~ and requires individualized documentation regarding ~~this~~ the child's needs in permanent placement. (5-8-09)(____)
- 08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)
 - a.** Notification of the pending proceedings by registered mail with return receipt requested, to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (5-3-03)
 - b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)
 - c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the right to court-appointed counsel; (5-8-09)
 - d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)
 - e.** A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)

f. Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

900. ADOPTION ASSISTANCE.

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

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

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

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

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

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

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

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

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

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

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

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

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that

cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

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

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

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

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

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

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

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

a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights or its equivalent; and (3-29-10)

b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on ~~known information regarding the birth family and child's history;~~ the child's experience of documented physical, emotional, or sexual abuse, or neglect; or (3-18-99)(____)

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is ~~a member of a sibling group that must not be placed apart~~ being placed for adoption with at least one (1) sibling; and (5-3-03)(____)

e. The State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (5-3-03)(____)

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

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

05. International Adoptions and Adoption Assistance. A child who meets the criteria for special needs under Subsection 900.02 of this rule, who is not a citizen or resident of the United States, and who was adopted outside of the United States or was brought into the United States for the purpose of being adopted, is not eligible to receive adoption assistance. This restriction does not prohibit adoption assistance payments for a child described in this Subsection who is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the adoptive parents. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

910. TYPES AND AMOUNTS OF ASSISTANCE.

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

01. Nonrecurring Adoption Reimbursement. Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. (3-29-10)

02. Monthly Cash Payment. Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount must not exceed the rate for family foster care found in Subsections 483 and 484 of these rules, which would be made if the child were in a family foster home in Idaho. Payments received for treatment foster care, gifts, clothing, and school fees are not considered part of the family foster care rate. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk becomes evident. For children who are currently eligible for Personal Care Services (PCS), the professional treatment foster care rate of up to a maximum of one thousand dollars (\$1,000) per month may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. (~~3-30-07~~)()

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

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