

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 16.06.02 - Rules Governing Standards for Child Care Licensing (Docket #16-0602-1003).

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 10-27-10. 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 11-29-10.

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

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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 7, 2010

SUBJECT: Department of Health and Welfare - IDAPA 16.06.02 - Rules Governing Standards for Child Care Licensing (Docket No. 16-0602-1003 (Proposed))

By this Proposed Rule docket, the Department of Health and Welfare amends chapter 16.06.02, Idaho Administrative Code (Docket No. 16-0602-1003)(hereinafter, "proposed rule").

The purpose of the proposed rule is to clarify the requirements for criminal history and background checks for licensed foster homes.

The Department states that the proposed rule is authorized by sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A and 56-1005(8), Idaho Code. Chapter 11, title 39, Idaho Code, deals with basic day care licensing. Section 39-1111, Idaho Code, directs the Idaho Board of Health and Welfare to establish procedures necessary to implement the chapter, but limits this rulemaking authority to the specific standards and procedures authorized by the chapter. Chapter 12, title 39, Idaho Code, is the Child Care Licensing Reform Act. Sections 39-1209, 39-1210, 39-1211 and 39-1213, Idaho Code, grants the Idaho Board of Health and Welfare the power to promulgate appropriate rules to implement and force listed standards with regard to licensing children's agencies, children's residential care facilities, private foster homes and children's therapeutic outdoor programs. Chapter 10, title 56, Idaho Code, deals generally with the Department. Section 56-1003, Idaho Code, provides the Board of Health and Welfare broad rulemaking authority. Section 56-1004A, Idaho Code, adopted in 2005 and amended in 2006, deals specifically with criminal history and background checks. Subsection 56-1005(8), Idaho Code, permits the Board to adopt, amend or repeal rules of the Department.

The Department states a public hearing would have been held if requested in writing by 25 persons, a political subdivision or an agency not later than September 15, 2010. All written comments were to be delivered to the Department on or before September 22, 2010.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

ANALYSIS

The proposed rule makes the following clarifications regarding an adult child 18 years or older who leave and then returns to the foster care home: if the adult child leaves for 90 days or less and subsequently resumes residing in the home, he will be considered an adult member of the household and must undergo a check within 15 days of becoming such an adult member; if the purpose of leaving is for higher education or military service and the periodic return is for 90 days or less, no criminal history and background check is required, although the adult child cannot have unsupervised direct care responsibilities for any foster children in the home; if the adult child leaves for higher education or military service and returns home for more than 90 days, the adult child is immediately considered to be an adult member of the household and a criminal history and background check is required within 15 days thereof. Section 404.03.

The amendments to section 404.03 are still unclear regarding the need for a criminal history and background check for an adult child (age 18 to 21) who leaves for purposes other than higher education or military service for greater than 90 days and subsequently returns to the foster home to reside therein. Presumably, such an adult child will need to undergo a criminal history and background check, but by specifying the other scenarios and not this particular one, the proposed rule leaves the matter unsettled.

The proposed rule also clarifies that the Department retains the authority to require a check at any time on individuals who are residing (rather than being “permanent residents”) in the home or on the property. Section 404.04. Other changes to the proposed rule are stylistic.

SUMMARY

The proposed rule appears to be authorized by sections 39-1211 and 56-1004A, Idaho Code.

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-1003

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 under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code.

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

Due to practice issues that have arisen in the process of licensing foster homes, the requirements for criminal history and background checks are being clarified.

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 18th day of August, 2010.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0602-1003

403. MEMBER OF HOUSEHOLD QUALIFICATIONS AND SUITABILITY.

To assure the safety and well-being of children, a member of the household ~~shall~~ must be in compliance with the requirements specified in these rules. (3-30-01)(____)

404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.

All applicants for a foster care license and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," and the following requirements: (3-30-07)

01. Required Procedures. Each applicant for a foster home license, and any other adult member of the household, must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

02. Change in Household Membership. By the next working day after another adult begins residing in a licensed foster home, a foster parent must notify the children's agency of the change in household membership and assure that the new adult member of the household will participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

03. Foster Parent's Child Turns Eighteen. A foster parent's child who turns eighteen (18) and ~~continues to~~ lives continuously in the home is not required to have a criminal history and background check except as specified in Subsection 404.03.c. of this rule. (3-30-07)(____)

a. After turning eighteen (18) years of age, if the foster parent's adult child moves out of leaves the foster parent's home for longer than ninety (90) days or less and returns to live subsequently resumes residing in the licensed foster home as a permanent resident, he will be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days of his return from the date he became an adult member of the household. (3-30-07)(____)

b. If the adult child leaves the foster home for the purpose of higher education or military service, and periodically returns to the home for less than ninety (90) days, he is not considered to ~~reside in the licensed foster home~~ be an adult member of the household and is not required to complete a criminal history and background check. While in the home, He cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for more than ninety (90) days or longer, he will immediately be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days from the date he became an adult member of the household. (3-30-07)(____)

c. If the adult child continues to live in his parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). (3-30-07)

04. Criminal History and Background Check at Any Time. The Department retains the authority to require a criminal history and background check at any time on individuals who are ~~permanent residents of~~ residing in a licensed foster home or on the foster parent's property. (3-30-07)(____)