

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 16.07.37 - Children's Mental Health Services (Docket No. 16-0737-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 6-24-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 7-23-10.

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:** May 24, 2010  
(June 7, 2010 mailing delay is due to LSO waiting for new GEMS computer program to be installed to process rules & is not yet complete)

**SUBJECT:** Department of Health and Welfare - IDAPA 16.07.37 - Children's Mental Health Services (Docket No. 16-0737-1001) (Temporary and Proposed)

By this temporary and proposed new chapter docket, the Department of Health and Welfare seeks to amend IDAPA 16.07.37, Children's Mental Health Services (hereinafter "proposed rule"), that was first adopted in 2008.

According to the Department, the proposed rule is authorized pursuant to sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004 and 56-1004A, Idaho Code, as well as by HB 715 (2010), the Department's fiscal year 2011 appropriation for mental health services.

Sections 16-2404, 16-2406, 16-2423 and 16-2433, Idaho Code, are parts of the Children's Mental Health Services Act, and address community services and supports, teens at risk, interagency collaboration, access to services, informed consent of medication or other treatment and the persons subject to involuntary or emergency treatment, and the authority of the Department's director to promulgate rules necessary to the implementation of that Act.

Section 56-202(b), Idaho Code, requires the Department's director to promulgate, adopt and enforce such rules and such method of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code, which deals with public assistance and welfare. Sections 56-203B, Idaho Code, provides that payment of public assistance for the benefit of any dependent child creates a debt due or owing to the Department by the parent or responsible party and creates a subrogation interest in the Department. Section 56-204A, Idaho Code, requires the

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Information Technology

Department to adopt appropriate rules related to children's services, including rules that provide for receiving from any source and investigating all reasonable reports or complaints of neglect, abuse, exploitation or cruel treatment of children.

Section 56-1003, Idaho Code, provides powers and duties to the Department's director in the area of public health; section 56-1004, Idaho Code, provides administrative powers and duties to the Department's director. Section 56-1004A, Idaho Code, adopted in 2005 and amended in 2006, deals specifically with criminal history and background checks. Subsection (1) authorizes the Department to conduct such checks of individuals who provide care or services to vulnerable adults or children and who are identified in rule as being required to have such a check. Subsection (2) describes the information that must or may be contained in such a check. Subsection (3) requires the Department to promulgate rules to further define those individuals who are required to have a background check.

HB 715 (2010) reduced the entire amount appropriated for the Department's Mental Health Services Division for fiscal year 2011 by 6.5% from the original 2010 appropriation. Section 8 of HB 715 provided that notwithstanding any other provisions of law, the intent of the Legislature is that the Department is required to provide those services authorized or mandated by law in each program, only to the extent of funding and available resources appropriated for each budgeted program.

The Department states that the reason for the proposed rule is to allow the Department to limit and prioritize Children's Mental Health Services in light of reduced appropriations in order to give the Department the ability to focus the available resources on those who have the greatest clinical and financial needs.

The Governor's justifications for the temporary rule are the protection of public health, safety or welfare and to comply with deadlines in amendments to governing law, i.e., HB 715 (2010).

According to the Department, no fee or charge is imposed by the proposed rule. The Department states that the proposed rule will align the rule with the intent language of HB 715 (2010), which reduced the Department's appropriations by a total of \$756,500.

According to the Department, negotiated rulemaking was not conducted because the rulemaking is being done to meet the appropriations mandated by HB 715 (2010). The Department states that public hearings are scheduled in Lewiston on June 17<sup>th</sup>, Idaho Falls on June 29<sup>th</sup> and Boise on June 30<sup>th</sup>. All written comments must be delivered to the Department on or before June 30, 2010.

## **ANALYSIS**

The sole substantive change in the proposed rule is the addition of a new subsection

407.01, which grants the Department the discretion to establish the total number of children who are eligible for mental health services through the Department. Criteria used to establish eligibility are court-ordered services, availability of funding, financial need, clinical need and “other factors.”

### **SUMMARY**

The proposed rule appears to be authorized under sections 56-202(b), Idaho Code, and section 8 of HB 715 (2010).

cc: Department of Health and Welfare  
Tamara Prisock & Chuck Halligan

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

**16.07.37 - CHILDREN'S MENTAL HEALTH SERVICES**

**DOCKET NO. 16-0737-1001**

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

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code; and H0715 (2010) - DHW Children's Mental Health budget holdbacks for SFY 2010 and appropriations for SFY 2011.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| <b>Thursday, June 17, 2010<br/>5:00 p.m. PDT</b>   | <b>Tuesday, June 29, 2010<br/>5:00 p.m. MDT</b>  | <b>Wednesday, June 30, 2010<br/>5:00 p.m. MDT</b>  |
|--|--|--|
| <b>Dept. of Health &amp; Welfare-Reg. 2<br/>State Office Building<br/>1118 F Street<br/>3rd Floor Conf. Rm.<br/>Lewiston, ID</b> | <b>Dept. of Health &amp; Welfare-Reg.7<br/>State Office Building<br/>150 Shoup Ave<br/>2nd Floor Conf. Rm.<br/>Idaho Falls, ID</b> | <b>Dept. Health &amp; Welfare-Reg. 4<br/>J.R. Williams Building<br/>700 West State Street<br/>East Conf. Rm.<br/>Boise, ID</b> |

The hearing sites 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:

The proposed rule changes will allow the Department to limit and prioritize Children's Mental Health Services, including eligibility. This is necessary due to the reductions in appropriations. These changes will give the Department the ability to focus the available resources on those who have the greatest clinical and financial needs.

In addition, these rule changes will more closely align the Children's Mental Health Services rules with the corresponding rules in IDAPA 16.07.33, "Adult Mental Health Services."

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to protect public health, safety, or welfare, and to comply with deadlines in amendments to governing law or federal programs (in this case, H0715 (2010)).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

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

The fiscal impact of the holdback on funds for SFY 2010 and the appropriations for SFY 2011 (both in H0715) reduces the appropriation for SFY 2010 by \$566,000 and by an additional \$190,500 for SFY 2011, for a total reduction of \$756,500. The rule changes will align the rules with the intent language found in H0715.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet budget appropriations approved by the legislature under H0715 (2010).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Chuck Halligan at (208) 334-6559.

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 June 30, 2010.

DATED this 28th day of April, 2010.

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

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0737-1001**

**407. ELIGIBILITY DETERMINATION.**

**01. The Department Determines Eligibility for Mental Health Services.** The total number of children who are eligible for mental health services through the Department will be established by the Department. The Department may, in its sole discretion, limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (5-1-10)T

**042. Eligibility Requirements.** To be eligible for children's mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

- a.** Be under eighteen (18) years of age; (5-8-09)
- b.** Reside within the state of Idaho; (5-8-09)
- c.** Have a DSM-IV-TR Axis I diagnosis. A substance use disorder alone, or developmental disorder alone, does not constitute an eligible Axis I diagnosis, although one (1) or more of these conditions may co-exist with an eligible Axis I diagnosis; and (5-8-09)

**d.** Have a substantial functional impairment as assessed by using the Child and Adolescent Functional Assessment Scale (CAFAS) or the Preschool and Early Childhood Functional Assessment Scale (PECFAS). Substantial functional impairment requires a full eight (8) (CAFAS) or seven (7) (PECFAS) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: ~~(5-8-09)~~(5-1-10)T

- i.** Self-harmful behavior; (5-8-09)
- ii.** Moods/emotions; or (5-8-09)
- iii.** Thinking. (5-8-09)

**023. Court-Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services under the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code and the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code. Subject to court approval, the Department will make efforts to include parents and guardians in the assessment, treatment, and service planning process. (5-8-09)

**034. Ineligible Conditions.** A child who does not meet the requirements under Subsections 407.0#2 or 407.023 of this rule is not eligible for children's mental health services, other than crisis response. A child with a diagnosis of substance use disorder alone, or developmental disorder alone, may be eligible for Department services under IDAPA 16.07.17, "Alcohol and Substance Use Disorders Services" or IDAPA 16.04.11, "Developmental Disabilities Agencies," for substance use or developmental disability services. ~~(5-8-09)~~(5-1-10)T