

Dear Senators LODGE, Broadsword & Bock, and
Representatives BLOCK, Hartgen and Ringo*:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Health & Welfare (Division of Welfare):

IDAPA 16.03.05 - Rules Pertaining To The Rules Governing Eligibility for Aid to the Aged, Blind &
Disabled (AABD) (Docket No. 16-0305-1101)

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 07/26/2011. 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 08/23/2011.

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 enclosed.

*This cover memo and analysis was originally sent on June 24, 2011 to House Health & Welfare
germane members (in error).



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

REVISED MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Commerce and Human Resources Committee*

FROM: Brooke Murdoch, Principal Legislative Research Analyst, LSO

DATE: July 7, 2011

SUBJECT: Department of Health and Welfare

16.03.05 - Rules Pertaining To The Rules Governing Eligibility for Aid to the Aged, Blind & Disabled (AABD) (Docket No. 16-0305-1101)

The Department of Health and Welfare submits notice of temporary and proposed rulemaking at IDAPA 16.03.05. According to the Department, the purpose of the temporary and proposed rulemaking is to align these rules with rules adopted by the 2011 Legislature in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" for the Children's System Redesign Project. Specifically, this rulemaking clarifies that home and community based services are available to children and adults, provides an additional condition for Medicaid eligibility relating to "cost-sharing" and provides eligibility requirements for the children's developmental disability waiver.

The temporary rule is scheduled to become effective on July 1, 2011. The Department states that the temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law. The Department further states that there is no cost to the general fund associated with this rulemaking.

We pose only the following question: in the first paragraph of Section 787 of the rule, should reference to Subsection 787.07 be changed to 787.08 in order to reflect the addition of this new Subsection?

The temporary and proposed rule is within the authority granted to the Department of Health and Welfare in Section 56-202, Idaho Code.

cc: Department of Health & Welfare
Tamara Prisock & Alberto Gonzalez

* This memo was sent on June 24, 2011 to House Health and Welfare Committee (in error).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2011.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 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 June 15, 2011.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Changes are being made in this chapter (IDAPA 16.03.05, "AABD") to align these rules with rules adopted by the 2011 Legislature in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" for the Children's System Redesign Project. Those rules redesigned developmental disabilities (DD) benefits for children. Those benefits are now restructured under two Home and Community Based Services (HCBS) waivers, and a related State Plan option that replaces current State Plan benefits provided by developmental disabilities agencies (DDAs). The changes for the Children's System Redesign rules, and for these rules, are effective July 1, 2011.

Specifically, the proposed rule changes to align AABD rules with the Children's System Redesign rules in IDAPA 16.03.10:

1. Add clarification that Home and Community Based Services are available to children or adults when the applicable waiver requirements are met;
2. Add references and clarifications in these rules to both IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.18, "Medicaid Cost-Sharing" as needed; and
3. Add eligibility criteria requirements for the children's developmental disabilities waivers and provide any clarification necessary for implementing the children's system redesign.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law. The corresponding amendments to IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" were passed under [Docket No. 16-0310-1002](#) by the 2011 Legislature and will go into effect July 1, 2011.

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

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

There is no cost to the state general fund associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to align this chapter with changes in IDAPA 16.03.10 made under Docket No. 16-0310-1002 approved by the 2011 Legislature. Extensive negotiated rulemaking was conducted and

public input was gathered under that docket.

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 temporary and proposed rule, contact Alberto Gonzalez at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 6th day of May, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 16-0305-1101**

787. HOME AND COMMUNITY BASED SERVICES (HCBS).

An aged, blind, or disabled ~~participant~~, **child or adult** who is not income eligible for SSI or AABD cash, in his own home or community setting, is eligible for Medicaid if he meets the conditions in Subsections 787.01 through 787.07 of these rules, and meets all requirements in one (1) of the waiver Sections 788 ~~through and 79089~~ of these rules.
~~(3-30-07)~~**(7-1-11)T**

- 01. Resource Limit.** Meets the AABD single person resource limit. (3-20-04)
- 02. Income Limit.** Income of the participant must not exceed three (3) times the Federal SSI monthly benefit for a single person. A married participant living at home with his spouse who is not an HCBS participant, may choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple may choose between the SSI and CP methods. (3-20-04)
- 03. Maintained in the Community.** The applicant must be able to be maintained safely and effectively in his own home or in the community with the waiver services. (3-20-04)
- 04. Cost of Care.** The cost of the participant's care must be determined to be cost effective as provided in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)
- 05. Waiver Services Needed.** The participant must need and receive, or be likely to need and receive, waiver services for thirty (30) consecutive days. The participant is ineligible when there is a break in need for, or receipt of, waiver services for thirty (30) consecutive days. (3-20-04)
- 06. Effective Date.** Waiver services are effective the first day the participant is likely to need and

receive waiver services. Medicaid begins the first day of the month in which the first day of approved waiver services are received. (3-20-04)

07. Annual Limit. The Department limits the number of participants approved for waiver services each year. A participant who applies for waiver services after the annual limit is reached, must be denied waiver services. (3-20-04)

08. Cost-Sharing. The requirements for cost-sharing by participants is found in IDAPA 16.03.18, "Medicaid Cost-Sharing." (7-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

790. CHILDREN'S DEVELOPMENTAL DISABILITY WAIVER(S). In order to be eligible for the Children's Developmental Disability Waiver(s): (7-1-11)T

01. Child Through Age 17 - ICF/ID Level of Care. The participant must be a child, birth through age seventeen (17) and must require the level of care provided by an intermediate care facility for persons with intellectual disabilities (ICF/ID) under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"; or (7-1-11)T

02. Child Age 3 Through 6 - ICF/ID Level of Care Plus Additional Requirements. The participant must be a child, age three (3) through six (6), and require the level of care provided by an intermediate care facility for persons with intellectual disabilities (ICF/ID); and (7-1-11)T

a. Have an autism spectrum diagnosis; or (7-1-11)T

b. Exhibit self-injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department and a severe deficit, defined as having a composite full scale functional age equivalency of fifty percent (50%) or less of the participant's chronological age. (7-1-11)T

790~~1~~. -- 798. (RESERVED).