

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

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

IDAPA 16.05.01 - Rules Pertaining To The Use and Disclosure of Department Records (Docket
No. 16-0501-1101).

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 09/29/2011. 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 10/27/2011.

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.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Commerce and Human Resources Committee
FROM: Legislative Research Analyst - Ryan Bush
DATE: September 12, 2011
SUBJECT: Department of Health and Welfare

IDAPA 16.05.01 - Rules Pertaining To The Use and Disclosure of Department Records (Docket No. 16-0501-1101)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.05.01 - Rules Pertaining To The Use and Disclosure of Department Records. The Department states that the proposed rulemaking will allow the Department to share information with law enforcement without a court order in order to assist law enforcement in removing a child from his or her home when the child is in imminent danger. The Department further states that the proposed rulemaking will bring the rules into federal compliance with the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA), 42 U.S.C. Section 5106a. Specifically, the proposed rulemaking creates an exception to the requirement that authorization be obtained in order to access confidential information.

The Department states that negotiated rulemaking was not conducted because the proposed change was done to align the rules with a federal statute (CAPTA). There is no negative fiscal impact resulting from this rulemaking.

The proposed rule appears to be in conformity with the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA), 42 U.S.C. Section 5106a, and within the authority granted to the Department in Sections 39-242(c), 56-221, 56-1003(2) and 56-1004(1)(a), Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-1101

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 39-242, 39-5403, 56-221, 56-222, 56- 1003, and 56-1004, Idaho Code; and 42 USC Section 5106a Child Abuse Prevention and Treatment and Adoption Reform (CAPTA).

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 21, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department is updating these rules to meet federal requirements for the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA). Current rule requires law enforcement to have a court order before the Department is allowed to release information to them. In Idaho, law enforcement, not the Department, has the ability to remove a child from his or her home when the child is in "imminent danger." The Department is amending these rules to assist in that process by allowing the Department to share information with law enforcement without a court order. This will alleviate delays in law enforcement's investigation of child abuse and neglect.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 due to this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to align these rules with federal statute (CAPTA).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tamara Prisock at (208) 334-5719.

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 28, 2011.

DATED this 8th day of August, 2011.

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 OF DOCKET NUMBER 16-0501-1101

100. EXCEPTIONS TO REQUIREMENT FOR AUTHORIZATION.

Confidential information will be released without an authorization to individuals and entities in compliance with a court order, or if they are legally authorized to receive it. The following are exceptions to the requirement for an authorization: (3-20-04)

01. Advocates and Guardians. Federally-recognized protection and advocacy agencies or duly appointed guardians ad litem have access to an individual's file as necessary to perform their legal functions. Guardians ad litem have access to records as provided in Section 16-1623, Idaho Code, except for: (3-20-04)

a. Drug abuse and sickle cell anemia records maintained by the Veteran's Administration (VA), as required by 38 USC Section 7332; (3-20-04)

b. Claims under laws administered by the VA as required by 38 USC Section 3301; and (3-20-04)

c. Drug abuse prevention programs that receive federal assistance, as required by 42 USC Section 290ee - 3. (3-20-04)

02. Licensure. In compliance with Section 9-340C(9), Idaho Code, records will be released if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission or position. These records will otherwise be provided in redacted form as required by law or rule. (4-2-08)

03. Fugitives and Missing Persons. (3-20-04)

a. A state or local law enforcement officer may receive the current address of any cash assistance recipient who is a fugitive felon, in compliance with Section 56-221, Idaho Code. (3-20-04)

b. The following health information may be disclosed to a law enforcement officer for the purpose of identifying or locating a suspect, fugitive, material witness or missing person: (3-20-04)

i. Name and address; (3-20-04)

ii. Date and place of birth; (3-20-04)

iii. Social security number; (3-20-04)

iv. Blood type and rh factor; (3-20-04)

v. Type of injury; (3-20-04)

vi. Date and time of treatment or death, if applicable; and (3-20-04)

vii. Distinguishing physical characteristics. (3-20-04)

c. DNA, dental records, or typing, samples or analysis of body fluids or tissue must not be disclosed. (3-20-04)

04. Duty to Warn or Report. Confidential information may be released without an authorization if necessary under a legal duty to warn or to report. (3-20-04)

05. Department Business, Monitoring and Legal Functions. Department employees and contractors may use and disclose records as necessary to perform normal business functions, including health treatment, audit

and quality improvement, investigation of fraud and abuse, establishment of overpayments and recoupment, public health, or other functions authorized by law. Information will be made available to state and federal auditors and compliance monitors. Confidential information will be provided to counsel as needed to evaluate, prepare for and represent the Department in legal actions. (3-20-04)

06. Emergencies. Confidential information may be disclosed to qualified medical personnel to the extent necessary to respond to a medical emergency that requires immediate attention. (3-20-04)

07. Multidisciplinary Staffing. Confidential information may be disclosed to employees of the Department, law enforcement, and other appropriate individuals to participate in a multidisciplinary team evaluation of child protection cases under Section 16-1609A, Idaho Code, or interdisciplinary Department staffing of services for an individual. All individuals who participate in such staffing must not redisclose the information and must comply with any other pertinent statute, rule or regulation. (3-20-04)

08. Collaborative Staffing. Confidential information may be disclosed in staffing by the Department and other individuals or entities if all participants are involved with the same or similar populations and have an equal obligation or promise to maintain confidentiality. Disclosure of information in inter-agency staffing must be necessary to coordinate benefits or services, or to improve administration and management of the services. Confidential information may be disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the staffing. All individuals who participate in such staffing must not redisclose the information except in compliance with any other pertinent statute, rule or regulation. (3-20-04)

09. Elected State Official. As provided by Section 16-1629(6), Idaho Code, any duly elected state official carrying out his official functions may have access to child protection records of the Department, and must not redisclose the information. (3-20-04)

10. Child Protection Agency. A legally mandated child protection agency may provide information necessary to investigate a report of known or suspected child abuse or neglect, or to treat a child and family who are the subjects of the record. (3-20-04)

11. Legally Authorized Agency. An agency will be provided appropriate information if the agency is legally responsible for or authorized to care for, treat or supervise a child who is the subject of the record. (3-20-04)

12. Informal Representatives. Informal representatives may be permitted to receive and deliver information on behalf of an individual, and may be given health information if the informal representative is directly involved with the individual's care. Confidential information may be withheld in whole or part if professional staff determines that disclosure is not in the best interest of the individual, based on the circumstances and their professional judgement. The Department will not disclose information that is prohibited from being disclosed by these rules or any other legal requirement. (3-20-04)

13. Law Enforcement. Any federal, state, or local law enforcement agency, or any agent of such agency, may be permitted access to information as needed in order to carry out its responsibilities under law to protect children from abuse and neglect. ()