

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 16.06.01 - Rules Pertaining To Child and Family Services (Docket No. 16-0601-1202);

IDAPA 16.06.08 - Rules Pertaining To The Rules and Minimum Standards for DUI Evaluators  
(Chapter Repeal) (Docket No. 16-0608-1201).

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 09/27/2012. 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 10/25/2012.

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 on the  
memorandum attached below.



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 & Human Resources Committee

**FROM:** Legislative Research Analyst - Ryan Bush

**DATE:** September 10, 2012

**SUBJECT:** Department of Health and Welfare - Child and Family Services, Rules and Minimum Standards for DUI Evaluators

IDAPA 16.06.01 - Rules Pertaining To Child and Family Services (Docket No. 16-0601-1202)

IDAPA 16.06.08 - Rules Pertaining To The Rules and Minimum Standards for DUI Evaluators (Chapter Repeal) (Docket No. 16-0608-1201)

### **(1) 16.06.01 - Rules Pertaining To Child and Family Services (Docket No. 16-0601-1202)**

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.06.01 - Rules Pertaining To Child and Family Services. The Department states that the proposed rulemaking is to clarify what information the Department can and must provide to foster parents and other professionals involved in the ongoing care of children in Idaho's child welfare system. Specifically, this rulemaking revises the information for alternate care providers such as the child's portion of the service plan including visitation arrangements, case history of the child and history of the child's previous placements. This rulemaking also provides for discretionary disclosure of information on a need-to-know basis to professionals involved in the care of a child who is the subject of a report of abuse, neglect or abandonment so as to maintain the safety and well-being of the child. Such professionals include physicians, teachers and mental health professionals.

The Department states that negotiated rulemaking was not conducted because it was not deemed feasible and the purpose of the rulemaking was to provide clarification and guidance. There is no fiscal impact associated with this rulemaking. Public hearings on this rulemaking will be held on September 18 in Boise, September 19 in Coeur d'Alene and September 20 in Pocatello.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 16-1629, 56-202(b), 56-204A, 56-803, 56-1003 and 56-1004, Idaho Code.

### **(2) 16.06.08 - Rules Pertaining To The Rules and Minimum Standards for DUI Evaluators (Chapter Repeal) (Docket No. 16-0608-1201)**

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.06.08 - Rules Pertaining To The Rules and Minimum Standards for DUI Evaluators (Chapter Repeal). The Department states that the courts and the Department have agreed that it is more effective and efficient to end separate licensing for

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

DUI evaluators and have DUI evaluations conducted at treatment facilities approved under IDAPA 16.07.20. Therefore, this chapter of rules will be repealed in its entirety.

The Department states that negotiated rulemaking was not conducted because the chapter is being repealed at the request of the courts. A public hearing on this rulemaking will be held at the Department's central office in Boise on September 13 with video conference available at all regional offices. The Department states that the repeal of this chapter will result in a loss of approximately \$2,500 per year due to loss of fees imposed on DUI Evaluators.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 39-311, 56-202(b) and 56-1003, Idaho Code.

cc: Department of Health and Welfare - Child and Family Services

Tamara Prisock

Miren Unsworth

Treana Clark

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1202

### 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, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code (Board authority); and the Child Protective Act, Idaho Code, Title 16, Chapter 16.

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

Tuesday, September 18, 2012 6:00 p.m. (MDT Time)	Wednesday, September 19, 2012 6:00 p.m. (PDT Time)	Thursday, September 20, 2012 6:00 p.m. (MDT Time)
1720 Westgate Dr., Suite D Boise, ID 83704	1250 Ironwood Drive Coeur d'Alene, ID 83814	1070 Hiline, Suite 230 Pocatello, ID 83201

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:

Foster parents and professionals involved in the ongoing care of children in Idaho's child welfare system continue to report to Department personnel that they are not receiving information necessary to carry out their roles and duties in caring for children in Idaho's child welfare system. In order to remedy this, a rule change is being made to clarify what information the Department can and must provide to foster parents and other professionals involved in the ongoing care of children in Idaho's child welfare system.

**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.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not deemed feasible as the purpose of this rulemaking is to provide clarification of the rules and guidance to Department staff regarding the disclosure of information to foster parents and professionals involved in the ongoing care of children in Idaho's child welfare system. It does not change, or in any way relax, the rules for disclosure of information. The actual requirements for the disclosure of information are in IDAPA 16.05.01, "Use and Disclosure of Department Records." Those rules reflect Idaho law on the matter, and are not subject to negotiation as a result of this rulemaking.

**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 Miren Unsworth at (208) 334-5925.

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 26, 2012.

DATED this 6th day of August, 2012.

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](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0601-1202**

**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~~ A copy of the child's portion of the service plan including any visitation arrangements; (3-30-01)( )

**e.** The case history of the child, including the reason the child came into foster care, the child's legal status, and the permanency goal for the child; ( )

**f.** A history of the child's previous placements and reasons for placement changes, excluding information that identifies or reveals the location of any previous alternate care providers without their consent; ( )

**eg.** The child's cultural and racial identity; (3-18-99)

**fh.** Any educational, developmental, or special needs of the child; (3-18-99)

**gi.** The child's interest and talents; (3-18-99)

**hj.** The child's attachment to current caretakers; (3-18-99)

**ik.** The individualized and unique needs of the child; (3-18-99)

- j.** Procedures to follow in case of emergency; and (3-18-99)
- km.** 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. (4-7-11)
- 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**554. RESPONSE PRIORITIES.**

The Department must use the following statewide standards for responding to allegations of abuse, neglect, or abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response standards must be documented in the family's case file with a description of action taken, and must be reviewed and signed by the Child and Family Services Supervisor. (5-8-09)

**01. Priority I.** The Department must respond immediately if a child is in immediate danger involving a life-threatening or emergency situation. Emergency situations include sexual abuse when a child may have contact with the alleged perpetrator and circumstances indicate a need for immediate response. Law enforcement must be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child must be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. (3-30-07)

**02. Priority II.** A child is not in immediate danger but allegations of abuse, including physical or sexual abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement must be notified within twenty-four (24) hours. The child must be seen by the family services worker within forty-eight hours (48) of the Department's receipt of the referral. Law enforcement must be notified within twenty-four (24) hours of receipt of all Priority II referrals which involve concerns of abuse, neglect, or abandonment. (5-8-09)

**03. Priority III.** A child may be in a vulnerable situation because of services needs which, if left unmet, may result in harm, or a child is without parental care for safety, health and well being. The child and parent(s) or legal guardian(s) will be interviewed for substantiation of the facts, and to assure that there is no abuse, neglect, or abandonment by parent(s) or legal guardian(s). A family services worker must respond within three (3) calendar days and the child must be seen by the worker within five (5) calendar days of the Department's receipt of the referral. (5-8-09)

**04. Notification of the Person Who Made the Referral.** The Department must notify the person who made the child protection referral of the receipt of the referral within five (5) days. (3-30-07)

**05. Disclosure of Information to Professionals.** The Department has the discretion to disclose, on a need-to-know basis, minimally necessary information to individuals who are professionally involved in the ongoing care of the child who is the subject of a report of abuse, neglect, or abandonment. This includes information that the professional will need to know in order to fulfill his or her role in maintaining the child's safety and well-being. This provision applies to: ( )

**a.** Physicians, residents on a hospital staff, interns, and nurses; ( )

**b.** School teachers, school staff, and day care personnel; and ( )

**c.** Mental health professionals, including psychologists, counselors, marriage and family therapists, and social workers. ( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.08 - RULES AND MINIMUM STANDARDS FOR DUI EVALUATORS**  
**DOCKET NO. 16-0608-1201 - (CHAPTER REPEAL)**  
**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 18-8005(11) and (14), 56-1003 (Director authority), and Section 39-311 (Board authority), Idaho Code.

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

<p><b>*ORIGINATING LOCATION -- LIVE MEETING*</b>  <b>Thursday, September 13, 2012</b>  <b>2:00 pm (PDT) -- 3:00 pm (MDT)</b></p>
<p>Idaho Department of Health and Welfare, Central Office          Conference Room 3A (3rd floor)          450 West State Street          Boise, ID 83702</p>

<b>*VIDEOCONFERENCE LOCATIONS*</b>	
<p><b>Region I Office – Coeur d’Alene</b>  <b>Main Conference Room</b>  <b>2195 Ironwood Court</b>  <b>Coeur d’Alene, ID 83814</b></p>	<p><b>Region II Office – Lewiston</b>  <b>1st Floor Conference Room</b>  <b>1118 “F” Street</b>  <b>Lewiston, ID 83501</b></p>
<p><b>Region III Office – Caldwell</b>  <b>Owyhee Conference Room (Rm. 226)</b>  <b>3402 Franklin Road</b>  <b>Caldwell, ID 83605</b></p>	<p><b>Region IV Office – Boise</b>  <b>Room 137</b>  <b>1720 Westgate Drive, Suite A</b>  <b>Boise, ID 83704</b></p>
<p><b>Region V Office – Twin Falls</b>  <b>Room 116</b>  <b>823 Harrison</b>  <b>Twin Falls, ID 83301</b></p>	<p><b>Region VI Office – Pocatello</b>  <b>Room 225</b>  <b>421 Memorial Drive</b>  <b>Pocatello, ID 83201</b></p>
<p><b>Region VII Office – Idaho Falls</b>  <b>Conference Room 240</b>  <b>150 Shoup Ave.</b>  <b>Idaho Falls, ID 83402</b></p>	



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 Courts and the Department have agreed it is more effective and efficient to end separate licensing for DUI Evaluators and have DUI evaluations conducted at treatment facilities approved under IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs." Therefore, this chapter of rules will be repealed in its entirety.

**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:

The repeal of these rules will result in a revenue loss to the Department of approximately \$2,500 per year due to the loss of licensing/renewal fees imposed on DUI Evaluators under this chapter.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking is not feasible as this chapter is simply being repealed at the request of the Courts.

**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 Treena Clark at (208) 334-6611.

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 26, 2012.

DATED this 6th day of August, 2012.

Tamara Prisock  
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**IDAPA 16.06.08 IS BEING REPEALED IN ITS ENTIRETY**