

Dear Senators HEIDER, Nuxoll, Bock, and
Representatives WOOD, Perry, Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Health and Welfare - Criminal History and Background Checks:
IDAPA 16.05.06 - Rules Pertaining To Criminal History and Background Checks (Fee Rule) (Docket No. 16-0506-1301).

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 08/28/2013. 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 09/26/2013.

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 Health & Welfare Committee
FROM: Senior Legislative Research Analyst - Ryan Bush
DATE: August 9, 2013
SUBJECT: Department of Health and Welfare - Criminal History and Background Checks

IDAPA 16.05.06 - Rules Pertaining To Criminal History and Background Checks (Fee Rule) (Docket No. 16-0506-1301)

The Department of Health and Welfare submits notice of temporary and proposed rulemaking at IDAPA 16.05.06 - Rules Pertaining To Criminal History and Background Checks (Fee Rule). The Department states that this rulemaking is needed to implement the provisions of House Bill 125 adopted by the 2013 Legislature. House Bill 125 requires the Department to conduct a criminal history check on a new class of individuals, court-appointed guardians and conservators for vulnerable adults. Such criminal history checks are conducted at the proposed guardian's expense. The proposed rulemaking adds statutory references and adds the new class of individuals that requires a criminal history check.

The Department states that negotiated rulemaking was not conducted because the rulemaking is necessary to meet statutory requirements and that a temporary rule is needed in order to protect children and vulnerable adults. There is no fiscal impact to the state general fund associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 56-202(b), 56-204A and 56-1007, Idaho Code, and House Bill 125.

cc: Department of Health and Welfare - Criminal History and Background Checks
Tamara Prisock
Fernando Castro

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1301 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2013.

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 Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, Idaho Code, and 2013 Legislation in House Bill 125.

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 August 21, 2013.

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:

These rule changes are needed to implement HB 125 (2013) adopted by the 2013 Legislature that requires the Department to conduct a criminal history check (CHC) on a new class of individuals required or ordered by the courts. An individual will be required to undergo the CHC prior to being appointed as a guardian or conservator for a vulnerable adult. HB 125 also requires that a CHC be conducted at the proposed guardian's expense, for any individual who will reside in the incapacitated person's proposed residence.

The changes to these rules added statutory references and the class of individuals requiring the Department's criminal history and background checks.

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 for the following reasons:

In order to protect children and vulnerable adults, statutes taking effect July 1, 2013, require that guardians and conservators appointed by the courts must have a Department criminal history and background check. Statutes require an applicant for a criminal history check to cover the cost of the check.

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:

The fee amount for a Department fingerprint-based criminal history and background check is \$65 based on the actual cost. The 2013 Legislature added a new class of individuals that are required to have a criminal history and background check prior to being appointed by the court as a guardian or conservator, or any individual who will reside in the incapacitated person's residence.

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 are no additional costs to be paid for by the Department or the state general fund due to this rulemaking. It is anticipated that 700 individuals will request these criminal history and background checks at \$65 per check for a total of \$45,500 in total receipts.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking action was necessary to meet statutory requirements.

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 temporary and proposed rule, contact Fernando Castro, at (208) 332-7999.

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 August 28, 2013.

DATED this 9th day of July, 2013.

Tamara Prisock
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND PROPOSED TEXT
FOR FEE DOCKET NO. 16-0506-1301**

000. LEGAL AUTHORITY.

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, ~~56-1007~~, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, ~~and~~ 39-5604, ~~66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5)~~, Idaho Code. ~~(3-26-08)(7-1-13)T~~

(BREAK IN CONTINUITY OF SECTIONS)

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or Department rules to complete a criminal history and background check. (3-4-11)

01. Adoptive Parent Applicants. Individuals who must comply with IDAPA 16.06.01, "Child and Family Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

02. Alcohol or Substance Use Disorders Treatment Facilities and Programs. Individuals who must comply with IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs," and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-4-11)

03. Certified Family Homes. Individuals who must comply with Section 39-3520, Idaho Code, IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

04. Children's Residential Care Facilities. Individuals who must comply with Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

05. Children's Therapeutic Outdoor Programs. Individuals who must comply with Section 39-1208, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

06. Contracted Non-Emergency Medical Transportation Providers. Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-4-11)

07. Court Appointed Guardians and Conservators. Individuals who must comply with the requirements of Title 15, Chapter 5, Idaho Code, and Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules. (7-1-13)T

078. Designated Examiners and Designated Dispositioners. Individuals who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (3-4-11)

089. Developmental Disabilities Agencies. Individuals who must comply with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

0910. Emergency Medical Services (EMS). Individuals who must comply with IDAPA 16.02.03, "Rules Governing Emergency Medical Services," and IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements." (7-1-12)

101. Home and Community-Based Services (HCBS). Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (7-1-12)

112. Home Health Agencies. Individuals who must comply with IDAPA 16.03.07, "Home Health Agencies." (3-4-11)

123. Idaho Child Care Program (ICCP). Individuals who must comply with IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." (3-4-11)

134. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID). Individuals who must comply with IDAPA 16.03.11, "Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID)." (3-4-11)

145. Licensed Foster Care. Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

156. Licensed Day Care. Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)

167. Mental Health Clinics. Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (3-4-11)

178. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. Individuals who must comply with IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units." (3-4-11)

189. Personal Assistance Agencies. Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

1920. Personal Care Service Providers. Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

201. Psychosocial Rehabilitation Providers. Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

~~242.~~ **Residential Care or Assisted Living Facilities in Idaho.** Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (3-4-11)

~~223.~~ **Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill.** Individuals who must comply with IDAPA 16.03.15, "Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill." (3-4-11)

~~234.~~ **Service Coordinators and Paraprofessional Providers.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

~~245.~~ **Skilled Nursing and Intermediate Care Facilities.** Individuals who must comply with IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." (3-4-11)

~~256.~~ **Support Brokers and Community Support Workers.** Individuals who must comply with IDAPA 16.03.13, "Consumer-Directed Services." (3-4-11)

(BREAK IN CONTINUITY OF SECTIONS)

180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.

01. Department Clearance. The Department will issue a clearance or denial once the criminal history and background check is completed. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. (~~3-26-08~~)(7-1-13)T

02. Findings for Court Required Criminal History and Background Checks. As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. (7-1-13)T