

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. 16-0506-1401).

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 07/23/2014. 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 08/20/2014.

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 334-4834, 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: July 3, 2014
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. 16-0506-1401)

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 rule change is needed to align with legislative intent and rules approved by the 2014 Legislature. Specifically, this rulemaking accomplishes the following:

- (1) Provides that high risk providers of Medicaid and those associated with behavioral health community crisis centers and Idaho behavioral health plans may be subject to criminal history and background checks;
- (2) Redesignates "Mental Health Clinics" as "Mental Health Services";
- (3) Removes psychosocial rehabilitation providers and those at semi-independent group residential care facilities for the developmentally disabled or mentally ill as individuals subject to criminal history and background checks;
- (4) Removes a provision stating that a fee may be assessed when an individual misses a fingerprinting appointment;
- (5) Provides that an employer must print clearance within fourteen calendar days of the clearance being accessible on the Department's website; and
- (6) Allows an employer to use clearance if obtained under certain conditions.

The Department states that a temporary rule is justified because of the Legislature's approval of Department rules that amend classifications of individuals required to have a criminal history and background check. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 56-202(b), 56-1004, 56-1004A and 56-1007, Idaho Code.

cc: Department of Health and Welfare
Beverly Barr and Frank Powell

COST/BENEFIT ANALYSIS FORM
Department of Health and Welfare
Administrative Procedures Section (APS)

Docket Number: 16-0506-1401

Agency Contact: Fernando Castro
Phone: 332-7999

Rules Specialist: Bev Barr
Phone: 334-5736

Date Analysis Completed: 4/14/2014

IDAPA Chapter Number and Title: IDAPA 16.05.06, "Criminal History and Background Checks"

Fee Rule Status: Proposed Temporary Effective date: 7/1/2014

Instructions:

Section 67-5223(3), Idaho Code, requires that all proposed rules in which a fee or charge is imposed or increased must include a statement of economic impact (cost/benefit analysis) of the rule change at the time the rule text is submitted for publication. This analysis needs to include an estimated cost to the agency to implement the rule and an estimated cost to be borne by citizens, or the private sector, or both.

Cost/Benefit Analysis For This Rule Change:

The Department does not expect to increase the amount of background checks it conducts by a significant number of checks. The fee for the Department's background check is \$65.00 per person. The receipts for the background check fees per fiscal year are figured to be cost neutral for the changes being made to these rules which add, remove, and rename some classifications.

There are no additional costs to be borne by the Department or the State General Fund to carry out the requirements for legislation and adoption of rules because the fees collected are from applicants to cover all costs.

The 2014 Legislature approved amendments for criminal history and background checks (CHC) for statutes and rules under:

- IDAPA 16.07.30, "Behavioral Health Crisis Centers," and Section 39-9109, Idaho Code were added;
- IDAPA 16.03.09, "Medicaid Basic Plan Benefits," for providers determined to be "High Risk Providers" of Medicaid services were added and are currently checked;
- IDAPA 16.03.15, "Semi-Independent Group Residential Facilities for the Developmentally Disabled or Mentally Ill," were removed and not currently being checked;
- IDAPA 16.03.09, "Medicaid Basic Plan Benefits," removed and renamed classifications now required in contract for the Idaho Behavioral Health Plan; and
- IDAPA 16.07.33, "Adult Mental Health Services," and IDAPA 16.07.37, "Children's Mental Health Services," added references to these as they are currently being checked.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1401 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2014.

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.

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 July 16, 2014.

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 align this chapter with legislative intent and rules approved by the 2014 Legislature. The changes to these rules add references and amends classes of individuals requiring the Department's criminal history and background checks. A sentence that references a Section in these rules that was vacated, is being deleted in this docket as requested by the 2014 Legislature.

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:

The 2014 Legislature approved Department rules that amend classifications of individuals required to have a Department criminal history and background 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 \$65.00 based on the actual cost. The individuals that are required to have these checks are responsible for the cost.

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 the individuals being checked are in the same types of classifications that currently are being checked, and the fiscal impact will be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department found it was not feasible to conduct negotiated rulemaking in order to have temporary rules in place to meet legislative intent and 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 July 23, 2014.

DATED this 6th day of June, 2014.

Tamara Prisock
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P.O. Box 83720
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THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0506-1401
(Only those Sections being amended are shown.)

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, 39-5604, [39-9109](#), 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code. ~~(3-20-14)~~[\(7-1-14\)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~~ [16.07.17, "Substance Use Disorders Services."](#) ~~(3-4-11)~~[\(7-1-14\)T](#)

03. Behavioral Health Community Crisis Centers. [Individuals who must comply with IDAPA 16.07.30, "Behavioral Health Community Crisis Centers."](#) [\(7-1-14\)T](#)

034. 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)

045. 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)

056. 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)

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

~~078.~~ **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. (3-20-14)

~~089.~~ **Designated Examiners and Designated Dispositioners.** Individuals who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (3-4-11)

~~0910.~~ **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)

~~101.~~ **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)

~~12.~~ **High Risk Providers of Medicaid.** Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and the Medicaid Provider Handbook. (7-1-14)T

~~143.~~ **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)

~~124.~~ **Home Health Agencies.** Individuals who must comply with IDAPA 16.03.07, "Home Health Agencies." (3-4-11)

~~15.~~ **Idaho Behavioral Health Plan (IBHP).** Individuals who are contractors, contractor's employees, and subcontractors in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (7-1-14)T

~~136.~~ **Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." (3-4-11)

~~147.~~ **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)

~~158.~~ **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)

~~169.~~ **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)

~~1720.~~ **Mental Health Clinics Services.** Individuals who must comply with IDAPA ~~16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.09, "Medicaid Basic Plan Benefits~~ 16.07.33, "Adult Mental Health Services," and IDAPA 16.07.37, "Children's Mental Health Services." (3-4-11)(7-1-14)T

~~1821.~~ **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)

~~1922.~~ **Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)

~~203.~~ **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)

~~21.~~ **Psychosocial Rehabilitation Providers.** Individuals who must comply with IDAPA 16.03.10,

~~“Medicaid Enhanced Plan Benefits.”~~

~~(3-4-11)~~

~~224.~~ **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)

~~23.~~ ~~**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)

~~245.~~ **Service Coordinators and Paraprofessional Providers.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)

~~256.~~ **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)

~~267.~~ **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)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department obtains fingerprints electronically at each of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-14)

01. Department Fingerprinting Locations. A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. ~~A fee may be assessed when an individual misses the scheduled appointment as provided in Section 051 of these rules.~~ Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these rules. ~~(7-1-14)~~(7-1-14)T

02. Submitting Fingerprints by Mail. When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-14)

03. Submission of Reprints. In the event that an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

01. Department Clearance. A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance.

The employer must print ~~out~~ the clearance within fourteen (14) calendar days of the clearance being accessible on the Department's website, and maintain a copy readily available for inspection. ~~(7-1-14)~~(7-1-14)T

02. Revocation of Department Clearance. An individual's previously issued clearance may be revoked for the following: (7-1-14)

a. The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. (7-1-14)

b. The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same employer eliminates the requirement for a new background check. The provisions stipulated on Subsections 300.03 and 300.04 of this rule still apply. (7-1-12)

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

a. Accepting employment with a new employer; or (3-26-08)

b. Applying for licensure or certification with the Department; and (3-26-08)

c. His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

a. The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; ~~and~~ ~~(3-26-08)~~(7-1-14)T

b. Prior to allowing the individual to provide services, the employer must obtain access to the individual's background check results and clearance through the Department's website by having the employer's identification number added to the individual's background check results, and (7-1-14)T

b.c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)

i. The action must be initiated by the employer within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and (7-1-12)

ii. The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.b.c. of this rule. ~~(7-1-12)~~(7-1-14)T

03. Employer Discretion. The new employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. (3-26-08)

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required.

(3-26-08)