

Dear Senators HEIDER, Nuxoll, Schmidt, and
Representatives WOOD, Packer, Rusche:

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

IDAPA 16.03.19 - Rules Governing Certified Family Homes - Proposed Rule (Docket No.
16-0319-1601).

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 10/11/2016. 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 11/08/2016.

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.



Eric Milstead
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 - Elizabeth Bowen

DATE: September 23, 2016

SUBJECT: Department of Health and Welfare

IDAPA 16.03.19 - Rules Governing Certified Family Homes - Proposed Rule (Docket No. 16-0319-1601)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.03.19. The purpose of the rule is to make changes to existing language in order to make the rule consistent with the Idaho Code. Specifically, the new language provides that medical foster homes for veterans are exempt from the rule, consistent with Sections 39-3502 and 39-3512, Idaho Code. Provisions regarding termination of admission agreements are also updated to conform to state law.

Negotiated rulemaking was conducted, and there is no negative fiscal impact on the state general fund. The Department states that this rulemaking is authorized pursuant to the following sections of the Idaho Code:

- 39-3505, which authorizes rulemaking for certified family homes; and
- 56-1005, which authorizes the Board of Health and Welfare to adopt the rules of the Department.

cc: Department of Health and Welfare
Tamara Prisock

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.19. - RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-1601

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 39-3505, and 56-1005, 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 September 21, 2016.

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:

These rule changes are required to align the Rules Governing Certified Family Homes with Idaho Code, specifically:

1. Provides an exemption to certification for VA Medical Foster Homes, as defined in Sections 39-3502 and 39-3512, Idaho Code, and
2. Amends the requirements for termination of the admission agreement since current rules concerning notification of termination are not consistent with requirements in Title 55, Chapter 2, and Title 6, Chapter 3, Idaho Code.

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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2016, Idaho Administrative Bulletin, [Vol. 16-4, page 32](#), and in the May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, page 48](#).

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 Karen Vasterling at (208) 239-6263.

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, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock, DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0319-1601
(Only Those Sections With Amendments Are Shown.)

001. TITLE, SCOPE, AND EXCEPTIONS.

- 01. Title.** These rules are cited as IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-11-06)
- 02. Scope.** These rules set the minimum standards and administrative requirements for any home that is paid to care for an adult living in the home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs assistance with activities of daily living. (4-11-06)
- 03. Exceptions to These Rules.** These rules do not apply to the following: (4-11-06)
- a.** Any home that provides only housing, meals, transportation, housekeeping or recreational and social activities. (4-11-06)
- b.** Any health facility defined by Title 39, Chapter 13, Idaho Code. (4-11-06)
- c.** Any residential care or assisted living facility defined by Title 39, Chapter 33, Idaho Code. (4-11-06)
- d.** Any arrangement for care in a relative's home that is not compensated through a federal or state program. (4-11-06)
- e.** Any home approved by the Department of Veterans Affairs as a "medical foster home" described in 38 CFR Part 17 and Sections 39-3502 and 39-3512, Idaho Code. Homes that provide care to both veterans and non-veterans are not exempt from these rules. ()
- 04. State Certification to Supersede Local Regulation.** These rules will supersede any program of any political subdivision of the state which certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

200. RESIDENT RIGHTS POLICY.

Each certified family home will develop and implement a written resident rights policy which will protect and promote the rights of each resident. The written description of legal rights must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department at the address in Section 005 of these rules, or local Regional Office regarding resident abuse and neglect and misappropriation of resident property in the home. Resident rights include the following: (4-11-06)

- 01. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits and meetings of family and resident groups, including: (4-11-06)
- a.** The right to send and receive mail unopened; (4-11-06)
- b.** If the resident is married, privacy for visits by his spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the attending physician. (4-11-06)
- 02. Humane Care.** Each resident has the right to humane care and a humane environment, including the following: (4-11-06)

- a. The right to a diet which is consistent with any religious or health-related restrictions; (4-11-06)
- b. The right to refuse a restricted diet; and (4-11-06)
- c. The right to a safe and sanitary living environment. (4-11-06)
- 03. Respectful Treatment.** Each resident has the right to be treated with dignity and respect, including: (4-11-06)
 - a. The right to be treated in a courteous manner by the provider; (4-11-06)
 - b. The right to receive a response from the home to any request of the resident within a reasonable time; (4-11-06)
 - c. Freedom from discrimination; and (4-11-06)
 - d. Freedom from intimidation, manipulation, coercion, and exploitation. (4-11-06)
 - e. The right to wear his own clothing. (4-11-06)
 - f. The right to determine his own dress and hair style; (4-11-06)
- 04. Basic Needs Allowance.** Residents whose care is paid for by public assistance must retain, for their personal use, the difference between their total income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," Section 513. (4-11-06)
- 05. Resident Funds.** Residents have the right to manage their personal funds. A home must not require a resident to deposit his personal funds with the home. (4-11-06)
- 06. Access to Resident.** Each home must permit immediate access to any resident by any representative of the Department, by the state Ombudsman for the elderly or his designees, by an adult protection investigator or by the resident's personal physician. Each home must also permit the following: (4-11-06)
 - a. Immediate access to a resident by immediate family or other relatives, subject to the resident's right to deny or withdraw consent at any time; (4-11-06)
 - b. Immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time; (4-11-06)
 - c. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (4-11-06)
- 07. Freedom From Harm.** The resident has the right to be free from physical, mental, or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline. (4-11-06)
 - a. A certified family provider who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, or exploited must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. (4-11-06)
 - b. The home must report within four (4) hours to the appropriate law enforcement agency when there is reasonable cause to believe that abuse, neglect, misappropriation of resident's property, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult resident according to Sections 39-5303 and 39-5310, Idaho Code. (4-11-06)
- 08. Health Services.** The resident has the right to control his health-related services, including:

- (4-11-06)
- a. The right to retain the services of his own personal physician and dentist; (4-11-06)
 - b. The right to select the pharmacy or pharmacist of his choice; (4-11-06)
 - c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; (4-11-06)
 - d. The right to participate in the formulation of his plan of service. (4-11-06)
- 09. Grievance.** The resident has the right to voice or file a grievance with respect to care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by the home to resolve grievances the resident may have, including those with respect to the behavior of other residents. (4-11-06)
- 10. Advance Notice.** The resident must receive written advance notice at least ~~fifteen (15)~~ thirty (30) calendar days prior to his non-emergency transfer or discharge unless he is transferred or discharged only for medical reasons, or for his welfare or the welfare of other residents, or for nonpayment for his stay. ~~The written advance notice can be up to thirty (30) days if agreed to in the admission agreement.~~ (4-11-06)()
- 11. Other Rights.** In addition to the rights outlined in Subsections 200.01 through 200.10 of these rules, the resident has the following rights: (4-11-06)
- a. The resident has the right to refuse to perform services for the home; (4-11-06)
 - b. The resident must have access to his personal records and must have the right to confidentiality of personal and clinical records; (4-11-06)
 - c. The resident has the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others; (4-11-06)
 - d. The resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the home; (4-11-06)
 - e. The resident has the right to examine, upon reasonable request, the results of the most recent inspection of the home conducted by the Department with respect to the home and any plan of correction in effect with respect to the home; (4-11-06)
 - f. The resident has a right to review a list of other certified family homes that may be available to meet his needs in case of transfer; (4-11-06)
 - g. The resident has the right not to be required to receive routine care of a personal nature from a member of the opposite sex; (4-11-06)
 - h. The resident has the right to be informed, in writing, regarding the formulation of advance directives as described in Title 39, Chapter 45, Idaho Code; and (4-11-06)
 - i. The resident must have any other right established by law. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

260. ADMISSIONS.

- 01. Admission Agreement.** At the time of admission to a certified family home, the provider and the

resident must enter into an admission agreement. The agreement will be in writing and must be signed by both parties. The agreement must, in itself or by reference to the resident's plan of care, include at least the following: (4-11-06)

- a. Whether or not the resident will assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis; (4-11-06)
- b. Whether or not the resident has ongoing ability to safeguard himself against personal harm, injury or accident. The certified family home must have a plan in place for steps it will take if the resident is not able to carry out his own self-preservation. (4-11-06)
- c. Whether or not the provider will accept responsibility for the resident's funds; (4-11-06)
- d. How a partial month's refund will be managed; (4-11-06)
- e. Responsibility for valuables belonging to the resident and provision for the return of a resident's valuables should the resident leave the home; (4-11-06)
- f. Amount of liability coverage provided by the homeowner's or renter's insurance policy. (4-11-06)
- g. ~~Fifteen (15) calendar days'~~ Written notice ~~or up to~~ at least thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party; ~~(4-11-06)~~()
- h. Conditions under which emergency transfers will be made; (4-11-06)
- i. Signed permission to transfer pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home; (4-11-06)
- j. Responsibility to obtain consent for medical procedures including the name, address, phone of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions. (4-11-06)
- k. Resident responsibilities as appropriate; (4-11-06)
- l. Amount the home will charge for room, utilities and three (3) daily meals; and (4-11-06)
- m. Other information as needed. (4-11-06)

02. Termination of Admission Agreement. The admission agreement must not be terminated except under the following conditions: (4-11-06)

- a. ~~By written notification by either party~~ Giving the other party ~~fifteen (15)~~ at least thirty (30) calendar days' written notice ~~or as agreed to in the Admission Agreement but not to exceed thirty (30) days for any reason;~~ ~~(4-11-06)~~()
- b. The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be provided in a certified family home; (4-11-06)
- c. Nonpayment of the resident's bill provided terminations under this subsection comply with Title 6, Chapter 3, Idaho Code; ~~(4-11-06)~~()
- d. Emergency conditions requiring a resident to transfer out of the home without ~~fifteen (15)~~ thirty (30) calendar days' written notice to protect the resident or other residents in the home from harm; and ~~(4-11-06)~~()
- e. Other written conditions as mutually established between the resident and the provider at the time of admission. (4-11-06)