

Dear Senators HEIDER, Souza, Jordan, and  
Representatives WOOD, Packer, Chew:

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

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Temporary and Proposed Rule (Docket No.  
16-0309-1809);

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No.  
16-0310-1801).

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 08/24/2018. 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 09/24/2018.

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:** Principal Legislative Research Analyst - Elizabeth Bowen

**DATE:** August 08, 2018

**SUBJECT:** Department of Health and Welfare

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Temporary and Proposed Rule (Docket No. 16-0309-1809)

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No. 16-0310-1801)

#### 16.03.09

#### Summary and Stated Reasons for the Rule

This temporary and proposed rule, regarding school-based Medicaid services, revises the definition of "personal assistant" to remove unnecessary job qualifications. The purpose of the rule is to make it easier for providers to offer services in a school-based setting. Under the new language, the job qualifications for school-based providers will be consistent with the job qualifications for community-based providers offering similar services. The Governor finds that the temporary rule is justified because it confers a benefit.

#### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted due to the technical nature of the rule change. There is no anticipated negative fiscal impact on the state general fund.

#### Statutory Authority

I.C. 56-202(b), I.C. 56-264.

#### 16.03.10

#### Summary and Stated Reasons for the Rule

This temporary and proposed rule enacts a new chapter of rules regarding Idaho Medicaid Plus, a managed care program for persons who are eligible for both Medicaid and Medicare. The rule provides definitions, a process for implementation of Idaho Medicaid Plus, eligibility requirements, and a description of covered services and limitations. The purpose of the rule is to comply with HB 260 (2011), which directed the Department of Health and Welfare to develop managed care plans for high-cost Medicaid populations. Idaho Medicaid Plus will be one of two plans available to persons eligible for both Medicaid and Medicare.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

### **Negotiated Rulemaking / Fiscal Impact**

Negotiated rulemaking was conducted. The anticipated fiscal impact is \$930,000. The Department intends to request federal financial participation, which, if granted, would mean that \$93,000 would come from the state general fund, with the remaining \$837,000 paid by the federal government.

### **Statutory Authority**

I.C. 56-202(b), I.C. 56-260 through I.C. 56-266.

cc: Department of Health and Welfare  
Frank Powell and Trinette Middlebrook

### **\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

# IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1809

### NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2018.

**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 Section 56-202(b) and 56-264, 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 August 15, 2018.

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:

Rules Governing Uniformity, IDAPA 08.02.02, updated the paraprofessional definition, and included language that stated that individuals not meeting the outlined requirements, would be considered a school or classroom aide. This change impacted school professionals by requiring a higher credential to provide services in school settings than is required for providers of the same service outside of the school setting (in the community). PCS paraprofessional provider qualifications are being updated for school-based services to align with community paraprofessional PCS provider qualifications.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), conferring a benefit, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These changes allow schools to meet the same requirements as the community providers, remove the additional requirements for services provided in school settings, and will help to ensure that children are getting the services they need while at school.

**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:

This is a technical change to the rule, changing the requirements to be a PCS provider in school settings to match the requirements for service providers outside of the school setting. This will not change the current process or provider types. There is no anticipated fiscal impact to state general funds, or any other funds as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a technical change to the rule. This will not change the current process or provider types that are currently used today.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Angie Williams, (208) 287-1169 or e-mail: [Angie.Williams@dhw.idaho.gov](mailto:Angie.Williams@dhw.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2018.

DATED this 29th day of June, 2018.

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  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0309-1809  
(Only Those Sections With Amendments Are Shown.)**

**855. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.**

Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (7-1-13)

**01. Behavioral Intervention.** Behavioral intervention must be provided by or under the supervision of a professional. (7-1-13)

**a.** A behavioral intervention professional must meet the following: (7-1-13)

i. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 028; or (7-1-13)

ii. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 019; or (7-1-13)

iii. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, “Rules Governing Uniformity,” Section 029; or (7-1-13)

iv. Habilitative intervention professional who meets the requirements defined in IDAPA 16.03.10 “Medicaid Enhanced Plan Benefits,” Section 685; or (7-1-13)

v. Individuals employed by a school as certified Intensive Behavioral Intervention (IBI) professionals prior to July 1, 2013, are qualified to provide behavioral intervention; and (7-1-13)

vi. Must be able to provide documentation of one (1) year’s supervised experience working with children with developmental disabilities. This can be achieved by previous work experience gained through paid employment, university practicum experience, or internship. It can also be achieved by increased on-the-job supervision experience gained during employment at a school district or charter school. (7-1-13)

**b.** A paraprofessional under the direction of a qualified behavioral intervention professional, must meet the following: (7-1-13)

i. Must be at least eighteen (18) years of age; (7-1-13)

ii. Demonstrate the knowledge, have the skills needed to support the program to which they are assigned; and (7-1-16)

iii. Must meet the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119. (7-1-13)

c. A paraprofessional delivering behavioral intervention services must be under the supervision of a behavioral intervention professional or behavioral consultation provider. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the behavioral intervention service. (7-1-13)

**02. Behavioral Consultation.** Behavioral consultation must be provided by a professional who has a Doctoral or Master's degree in psychology, education, applied behavioral analysis, or has a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and who meets one (1) of the following: (7-1-13)

a. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028. (7-1-13)

b. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019. (7-1-13)

c. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity" Section 029. (7-1-13)

d. An individual with a Pupil Personnel Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 027, excluding a licensed registered nurse or audiologist. (7-1-13)

e. An occupational therapist who is qualified and registered to practice in Idaho. (7-1-13)

f. Therapeutic consultation professional who meets the requirements defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 685. (7-1-13)

**03. Medical Equipment and Supplies.** See Subsection 853.03 of these rules. (3-20-14)

**04. Nursing Services.** Nursing services must be provided by a licensed registered nurse (RN) or by a licensed practical nurse (LPN) licensed to practice in Idaho. (7-1-13)

**05. Occupational Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**06. Personal Care Services.** Personal care services must be provided by or under the direction of a registered nurse licensed by the State of Idaho. (7-1-13)

a. Providers of PCS must have at least one (1) of the following qualifications: (7-1-13)

i. Licensed Registered Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed registered nurse; (7-1-13)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; (7-1-16)

iii. Certified Nursing Assistant (CNA). A person currently certified by the State of Idaho; or (7-1-16)

iv. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services *and meets the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119.* The assistant must be at least age

eighteen (18) years of age. ~~Medically oriented services may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." The licensed registered nurse may require a CNA if, in their professional judgment, the student's medical condition warrants a CNA.~~ (7-1-16)(8-1-18)T

**b.** The licensed registered nurse (RN) must review or complete, or both, the PCS assessment and develop or review, or both, the written plan of care annually. Oversight provided by the RN must include all of the following: (7-1-16)

- i.** Development of the written PCS plan of care; (7-1-13)
- ii.** Review of the treatment given by the personal assistant through a review of the student's PCS service detail reports as maintained by the provider; and (7-1-16)
- iii.** Reevaluation of the plan of care as necessary, but at least annually. (7-1-13)

**c.** The RN must conduct supervisory visits on a quarterly basis, or more frequently as determined by the IEP team and defined as part of the PCS plan of care. (7-1-16)

**07. Physical Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**08. Psychological Evaluation.** A psychological evaluation must be provided by a: (7-1-13)

- a.** Licensed psychiatrist; (7-1-13)
- b.** Licensed physician; (7-1-13)
- c.** Licensed psychologist; (7-1-13)
- d.** Psychologist extender registered with the Bureau of Occupational Licenses; or (7-1-13)
- e.** Endorsed or certified school psychologist. (7-1-16)

**09. Psychotherapy.** Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (7-1-13)

- a.** Psychiatrist, M.D.; (7-1-13)
- b.** Physician, M.D.; (7-1-13)
- c.** Licensed psychologist; (7-1-13)
- d.** Licensed clinical social worker; (7-1-13)
- e.** Licensed clinical professional counselor; (7-1-13)
- f.** Licensed marriage and family therapist; (7-1-13)
- g.** Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (7-1-13)
- h.** Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (7-1-13)
- i.** Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (7-1-13)

**j.** Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists”; or (7-1-13)

**k.** Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, “Rules of the Idaho State Board of Psychologist Examiners.” (7-1-13)

**10. Community Based Rehabilitation Services (CBRS).** CBRS providers must be one of the following: (7-1-16)

**a.** Licensed physician, licensed practitioner of the healing arts; (7-1-16)

**b.** Advanced practice registered nurse; (7-1-16)

**c.** Licensed psychologist; (7-1-13)

**d.** Licensed clinical professional counselor or professional counselor; (7-1-13)

**e.** Licensed marriage and family therapist; (7-1-16)

**f.** Licensed masters social worker, licensed clinical social worker, or licensed social worker; (7-1-13)

**g.** Psychologist extender registered with the Bureau of Occupational Licenses; (7-1-13)

**h.** Licensed registered nurse (RN); (7-1-13)

**i.** Licensed occupational therapist; (7-1-13)

**j.** Endorsed or certified school psychologist; (7-1-16)

**k.** Community Based Rehabilitation Services specialist. A CBRS specialist is: (7-1-16)

**i.** An individual who has a Bachelor’s degree and holds a current PRA credential; or (3-20-14)

**ii.** An individual who has a Bachelor’s degree or higher and was hired on or after November 1, 2010, to work as a CBRS specialist to deliver Medicaid-reimbursable mental health services. This individual may continue to do so for a period not to exceed thirty (30) months from the initial date of hire. The individual must show documentation that they are working towards this certification. In order to continue as a CBRS specialist beyond a total period of thirty (30) months from the date of hire, the worker must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the PRA. (7-1-16)

**iii.** Credential required for CBRS specialists. (7-1-16)

**(1)** Applicants who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the PRA requirements. (3-20-14)

**(a)** Applicants must be under the supervision of a licensed behavioral health professional, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. (7-1-16)

**(b)** CBRS supervision can be conducted using telehealth when it is equally effective as direct on-site supervision. (7-1-16)

**(2)** Applicants who work primarily with adults, but also intend to work with participants under the age



of eighteen (18), must have training addressing children's developmental milestones, or have evidence of classroom hours in equivalent courses. The worker's supervisor must determine the scope and amount of training the worker needs in order to work competently with children assigned to the worker's caseload. (3-20-14)

(a) Applicants must be under the supervision of a licensed behavioral health professional staff, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis. (7-1-16)

(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on-site supervision. (7-1-16)

(3) Applicants who intend to work primarily with children under the age of eighteen (18) must obtain a certificate in children's psychiatric rehabilitation in accordance with the PRA requirements. (3-20-14)

(4) Applicants who primarily work with children, but who also intend to work with participants eighteen (18) years of age or older, must have training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The worker's supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the worker's caseload. (3-20-14)

**11. Speech/Audiological Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**12. Social History and Evaluation.** Social history and evaluation must be provided by a licensed registered nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (7-1-13)

**13. Transportation.** Transportation must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (7-1-13)

**14. Therapy Paraprofessionals.** The schools may use paraprofessionals to provide occupational therapy, physical therapy, and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment plan that can be delegated to the paraprofessional must be identified in the IEP or transitional IFSP. (7-1-16)

**a. Occupational Therapy (OT).** Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for qualifications, supervision, and service requirements. (7-1-16)

**b. Physical Therapy (PT).** Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board," for qualifications, supervision and service requirements. (7-1-16)

**c. Speech-Language Pathology (SLP).** Refer to IDAPA 24.23.01, "Rule of the Speech and Hearing Services Licensure Board," and the American Speech-Language-Hearing Association (ASHA) guidelines for qualifications, supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (7-1-16)

**i.** Supervision must be provided by an SLP professional as defined in Section 734 of this chapter of rules. (7-1-16)

**ii.** The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the SLP service. (7-1-16)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1801**

**NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2018.

**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) and 56-264, Idaho Code; also House Bill 260 (2011), now codified as Sections 56-260 through 56-266, Idaho Code.

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

<b>PUBLIC HEARING Tuesday, August 14, 2018 1:30 p.m. (MDT)</b>	<b>PUBLIC HEARING Wednesday, August 15, 2018 1:00 p.m. (MDT)</b>	<b>PUBLIC HEARING Thursday, August 16, 2018 9:00 a.m. (PDT)</b>
<b>Medicaid Central Office 3232 Elder Street Conf. Rooms D East &amp; West Boise, ID 83705</b>	<b>DHW Region 6 Office 150 Shoup Avenue 2nd Floor Large Conf. Room Idaho Falls, ID 83402</b>	<b>DHW Region 2 Office 1118 F Street 3rd Floor Conf. Room Lewiston, ID 83501</b>

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:

Idaho House Bill 260 (2011) included legislative direction for the Department to develop a plan for Medicaid managed care for high-cost populations, including dual eligibles. Idaho Medicaid has offered a voluntary, integrated Medicare-Medicaid Coordinated Plan (MMCP) to Idaho’s dual eligibles since 2014. With the addition of another health plan to the market, dual eligibles will have two health plans to select from for the MMCP.

This rule change is needed to allow Medicaid to enroll those dual eligibles who have not elected to enroll in the coordinated MMCP into a Medicaid Managed Long-Term Services and Supports program, which will administer and coordinate Medicaid benefits. (NOTE: Medicaid will concurrently seek 1915(b) Waiver authority from the Centers for Medicare and Medicaid Services (CMS) to develop a mandatory enrollment structure.)

This rule change adds a new section of rules to this chapter that includes language pertaining to Idaho’s existing managed care structures (behavioral health benefits and dental benefits, respectively). The new section will also indicate that dual eligibles (except for Tribal members and other populations exempt under federal requirements) will be mandatorily enrolled into a Medicaid Managed Long-Term Services and Supports plan that will administer and coordinate their Medicaid benefits in counties where there are two or more participating health plans. Participants will have an election period during which they can select the plan of their choice. Individuals that have not selected a plan by a specified deadline will be randomly assigned to one plan or the other by the Division of Medicaid.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to confer a benefit to the public.

This temporary rule will provide for phased-in mandatory enrollment into a Medicaid managed care service delivery system for individuals with Medicare Parts A and B and Enhanced Medicaid (“dual eligibles”) in counties where there are two or more participating health plans. Managed care for dual eligibles provides an improved system of service delivery over Medicaid fee-for-service.

**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:

The anticipated fiscal impact is limited to the cost of system changes, which is currently projected at \$930,000, based on the high-level design estimate from the Department's Medicaid Management Information Systems (MMIS) vendor, Molina Medicaid Solutions. Medicaid is currently working to submit an Advance Planning Document (APD) to CMS to request federal financial participation (FFP) to offset the costs of these automation changes. If approved, the enhanced federal financial participation rate is 90% and the remaining 10% would be utilized from state general funds, meaning \$837,000 federal monies and \$93,000 state general fund.

**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 May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 67 and 68.**

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Ali Fernández at (208) 287-1179.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 22, 2018.

DATED this 29th day of June, 2018.

Tamara Prisock  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0310-1801  
(Only Those Sections With Amendments Are Shown.)**

**076. ~~--089.~~ (RESERVED) MANAGED CARE FOR DUALS: DEFINITIONS.**

For the purposes of the managed care service delivery system for dual eligible beneficiaries described in Sections 076 through 079 of these rules, the following definitions apply: (10-1-18)T

**01. Dual Eligible.** A participant who is eligible for medical assistance under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." The participant's Medicaid eligibility must not be based solely on the requirements found under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," Section 802, "Women Diagnosed With Breast or Cervical Cancer." In addition, the participant must be eligible for and enrolled in both Medicare Part A and Medicare Part B, and must not have Medicare eligibility due to End-Stage Renal Disease (ESRD). (10-1-18)T

**02. Health Plan.** A health insurance company responsible for administering Medicaid benefits to dual eligible participants under a provider agreement with the Department. (10-1-18)T

**03. Idaho Medicaid Plus.** A managed care program designed to administer Medicaid benefits for dual eligible participants administered under a provider agreement between the Department and participating health plans. (10-1-18)T

**04. Medicare/Medicaid Coordinated Plan.** A managed care program as defined in IDAPA 16.03.17, “Medicare/Medicaid Coordinated Plan Benefits.” (10-1-18)T

**05. Passive Enrollment.** An enrollment process in which a participant is assigned to a participating health plan in a managed care service delivery structure unless the participant actively opts out of the enrollment process. (10-1-18)T

**077. MANAGED CARE FOR DUALS: PROGRAM AUTHORITY AND IMPLEMENTATION.**

**01. Program Authority.** Idaho Medicaid Plus is a managed care program for dual eligible participants administered with approval from the Centers for Medicare and Medicaid Services (CMS). The Idaho Medicaid Plus program allows for a health plan to administer Medicaid benefits to dual eligible participants. (10-1-18)T

**02. Implementation.** Idaho Medicaid Plus will be implemented using a phased-in approach. (10-1-18)T

**a.** Idaho Medicaid Plus will be implemented in a pilot county upon approval from CMS and after the Department determines that participating health plans have passed a readiness review for implementation.(10-1-18)T

**b.** Implementation in additional counties will occur in a phased-in manner upon successful implementation in the pilot county as determined by the Department. Phased-in implementation in any and all additional counties will be subject to Department approval. (10-1-18)T

**c.** Participating health plans must meet established performance benchmarks prior to Idaho Medicaid Plus implementation in each successive geographic service area. (10-1-18)T

**078. MANAGED CARE FOR DUALS: PARTICIPANT ELIGIBILITY AND ENROLLMENT.**  
Idaho Medicaid Plus will be made available to dual eligible participants over age twenty-one (21) who reside in a county with at least one (1) participating health plan. (10-1-18)T

**01. Excluded Populations.** Idaho Medicaid Plus is not available to the following populations: (10-1-18)T

**a.** Dual eligible participants that have elected to enroll in the Medicare Medicaid Coordinated Plan as defined in IDAPA 16.03.17, “Medicare Medicaid Coordinated Plan Benefits.” (10-1-18)T

**b.** Individuals who have Medicare eligibility related to End-Stage Renal Disease. (10-1-18)T

**c.** Individuals enrolled in the Adult Developmental Disabilities 1915(c) waiver program as defined in Section 702 of these rules. (10-1-18)T

**02. Optional Populations.** Tribal members and pregnant women who are dual eligible participants can elect to voluntarily enroll in Idaho Medicaid Plus if it is available in their county of residence. These participants retain the right to disenroll from Idaho Medicaid Plus at any time. (10-1-18)T

**03. Mandatory Enrollment.** Dual eligible participants that are not members of an excluded population and reside in a county with two (2) or more participating health plans must select a health plan to administer their Idaho Medicaid Plus program. Mandatory enrollment procedures will occur in accordance with 42 CFR 438 Subpart B. (10-1-18)T

**04. Passive Enrollment.** Dual eligible participants that are not members of an excluded population and reside in a county with only one (1) participating health plan will be enrolled into that health plan to administer their Idaho Medicaid Plus program unless they opt out by contacting the Department using the instructions on the enrollment notice. These dual eligible participants may opt out of Idaho Medicaid Plus at any time. (10-1-18)T

**079. MANAGED CARE FOR DUALS: COVERED SERVICES.**

**01. Coverage and Limitations.** (10-1-18)T

**a.** Idaho Medicaid Plus covered services include Medicaid benefits as described in this chapter and IDAPA 16.03.09, “Medicaid Basic Plan Benefits.” (10-1-18)T

**b.** Services for adults with developmental disabilities as described in Sections 511, 580, and 703 of these rules are excluded from Idaho Medicaid Plus. (10-1-18)T

**c.** Services administered under the managed care or brokerage contracts as described in Section 080 of these rules, and IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” Sections 870 through 872 are excluded from Idaho Medicaid Plus. (10-1-18)T

**02. Provider Reimbursement.** Idaho Medicaid Plus participating health plans are required to reimburse network providers, at minimum, the established Medicaid fee schedule rates published on the Medicaid provider webpage and developed in accordance with Idaho Code and Department rule. (10-1-18)T

**080. -- 089. (RESERVED)**