

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 16.03.10 - Medicaid Enhanced Plan Benefits - Proposed Rule (Docket No. 16-0310-1802);

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Proposed Rule (Docket No. 16-0310-1803);

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Proposed Rule (Docket No. 16-0310-1804).

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 09/27/2018. 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 10/26/2018.

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 334-4854, 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:** September 10, 2018

**SUBJECT:** Department of Health and Welfare

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Proposed Rule (Docket No. 16-0310-1802)

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Proposed Rule (Docket No. 16-0310-1803)

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Proposed Rule (Docket No. 16-0310-1804)

#### Summary and Stated Reasons for the Rule

Docket No. 16-0310-1802: This proposed rule adds a definition of "transition services" and requirements for transition management to the existing rule. Transition services are goods and services that enable a Medicaid participant residing in a qualified health care facility to transition to a community-based setting. This rule change is necessary for Idaho to continue to offer these services to Medicaid participants. The services are currently offered under a grant scheduled to end September 30, 2020.

Docket No. 16-0310-1803: This proposed rule implements fixed special rates for Medicaid participants receiving tracheostomy or ventilator care at nursing facilities. The purpose of the rule is to simplify rates so that there is less administrative burden.

Docket No. 16-0310-1804: This proposed rule revises restrictive language regarding organ transplants in order to conform to Section 56-255, Idaho Code, which requires that Idaho's Medicaid program cover those services that are medically necessary. Rather than citing approved procedures by organ, the rule will now require prior authorization by the Department of Health and Welfare for organ transplants.

#### Negotiated Rulemaking / Fiscal Impact

Docket No. 16-0310-1802 (transition services): Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund. Though there is a cost to providing transition services, the state ultimately saves money by transitioning participants from institutional settings to the community. The Department of Health and Welfare anticipates that the overall savings to the state general fund in fiscal year 2020 will be \$125,585.42.

Docket No. 16-0310-1803 (ventilator rates): Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Docket No. 16-0310-1804 (organ transplants): Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. Idaho's Medicaid program already covers organ transplant procedures; these changes are being made to align the rule with statute and current practice.

**Statutory Authority**

Docket No. 16-0310-1802 (transition services): I.C. 56-202, 56-264, and 56-1610.

Docket No. 16-0310-1803 (ventilator rates): I.C. 56-202 and 56-264.

Docket No. 16-0310-1804 (organ transplants): I.C. 56-202.

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

## 16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1802

### 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 56-202(b), 56-264, and 56-1610, Idaho Code.

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

| <b>Tuesday, September 11, 2018<br/>1:00 pm (PDT)</b>  | <b>Tuesday, September 11, 2018<br/>2:00 pm (MDT)</b>   | <b>Thursday, September 13, 2018<br/>2:00 pm (MDT)</b>  |
|---|--|--|
| <b>Lewiston State Office Bldg.<br/>1118 F Street<br/>3rd Floor Conf. Rm.<br/>Lewiston, ID 83501</b> | <b>Idaho Falls State Office Bldg.<br/>150 Shoup Avenue<br/>2nd Floor Large Conf. Rm.<br/>Idaho Falls, ID 83402</b> | <b>Medicaid Central Office<br/>3232 Elder Street<br/>Conf. Rm. D West/East<br/>Boise, ID 83705</b> |

The hearing sites 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 Idaho Home Choice Program, operating through Money Follows the Person (MFP) Demonstration Grant, authorized through Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and Section 2403 of the 2010 Patient Protection and Affordable Care Act (P.L. 111-148), is scheduled to end September 30, 2020. To sustain the grant benefits, modifications to IDAPA, and the 1915(c) Home-Community Based Services (HCBS) Waivers is necessary.

**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:

This program provides support to move participants who are living in institutional settings like nursing facilities to live in community settings. Fully utilizing Transition Management and Transition Services will have an initial one-time cost of a maximum of \$5,481.92 per person.

However, transitioning these folks to community settings, authorized under the Aged and Disabled and Adult Developmental Disabilities Waivers, will generate an overall monthly ongoing cost savings of \$4,327.10 per participant. The Department anticipates that approximately 100 individuals will transition from institutional settings to community settings during state fiscal year 2020. Based on this estimate, it is anticipated that the overall savings would be \$432,709.99 (\$125,585.42 SGF and \$307,124.57 Federal funds).

**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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, pages 57-58](#).

**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 proposed rule, contact Katie Davis, (208) 364-1933.

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, 2018.

Dated this 2nd day of August, 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  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**326. AGED AND DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. (4-4-13)

**02. Adult Residential Care Services.** Adult residential care services consist of a range of services provided in a homelike, non-institutional setting that include residential care or assisted living facilities and certified family homes. Payment is not made for the cost of room and board, including the cost of building maintenance, upkeep and improvement. (4-4-13)

**a.** Adult residential care services consist of a range of services provided in a congregate setting licensed under IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho,” that include: (4-4-13)

- i. Medication assistance, to the extent permitted under State law; (4-4-13)
- ii. Assistance with activities of daily living; (3-19-07)
- iii. Meals, including special diets; (3-19-07)
- iv. Housekeeping; (3-19-07)
- v. Laundry; (3-19-07)
- vi. Transportation; (3-19-07)
- vii. Opportunities for socialization; (3-19-07)
- viii. Recreation; and (3-19-07)

- ix. Assistance with personal finances. (3-19-07)
- x. Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)
- xi. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)
- b.** Adult residential care services also consist of a range of services provided in a setting licensed under IDAPA 16.03.19, "Rules Governing Certified Family Homes," that include: (4-4-13)
  - i. Medication assistance, to the extent permitted under State law; (4-4-13)
  - ii. Assistance with activities of daily living; (4-4-13)
  - iii. Meals, including special diets; (4-4-13)
  - iv. Housekeeping; (4-4-13)
  - v. Laundry; (4-4-13)
  - vi. Transportation; (4-4-13)
  - vii. Recreation; and (4-4-13)
  - viii. Assistance with personal finances. (4-4-13)
  - ix. Administrative oversight must be provided for all services provided or available in this setting. (4-4-13)
  - x. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (4-4-13)
- 03. Specialized Medical Equipment and Supplies.** (4-4-13)
  - a.** Specialized medical equipment and supplies include: (4-4-13)
    - i. Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)
    - ii. Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)
  - b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)
- 04. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)
  - a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)
  - b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge, or public transit providers will be utilized. (3-19-07)

**05. Attendant Care.** Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). These services may include personal assistance and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional or the participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (actually performing a task for the person) or cuing to prompt the participant to perform a task. (4-4-13)

**06. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home, or to provide a clean, sanitary, and safe environment: (4-4-13)

**a.** Intermittent assistance may include the following. (4-4-13)

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in the home. (4-4-13)

**b.** Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

**c.** These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them or is responsible for their provision. (4-4-13)

**d.** In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

**07. Companion Services.** Companion services include non-medical care, supervision, and socialization provided to a functionally impaired adult. Companion services are in-home services to ensure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider, who may live with the participant, may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the participant. However, the primary responsibility is to provide companionship and be there in case they are needed. (4-4-13)

**08. Consultation.** Consultation services are services to a participant or family member. Services are provided by a Personal Assistance Agency to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self-reliance

possible for the participant and the participant's family. Services include consulting with the participant and family to gain a better understanding of the special needs of the participant and the role of the caregiver. (4-4-13)

**09. Home Delivered Meals.** Home delivered meals are meals that are delivered to the participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

- a. Rents or owns a home; (4-4-13)
- b. Is alone for significant parts of the day; (4-4-13)
- c. Has no caregiver for extended periods of time; and (4-4-13)
- d. Is unable to prepare a meal without assistance. (4-4-13)

**10. Homemaker Services.** Homemaker services consist of performing for the participant, or assisting him with, or both, the following tasks: laundry, essential errands, meal preparation, and other routine housekeeping duties if there is no one else in the household capable of performing these tasks. (4-4-13)

**11. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

b. Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

c. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**12. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

- a. Rent or own a home, or live with unpaid caregivers; (4-4-13)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no caregiver for extended periods of time; and (4-4-13)
- d. Would otherwise require extensive, routine supervision. (3-19-07)

**13. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, a certified family home, a developmental disabilities agency, a residential care or assisted living facility, or an adult day health facility. (4-4-13)



**14. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a licensed registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. (4-4-13)

**15. Habilitation.** Habilitation services assist the participant to reside as independently as possible in the community, or maintain family unity. (4-4-13)

**a.** Residential habilitation. Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

vii. Personal assistance services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the person or the person's primary caregiver(s) are unable to accomplish on his or her own behalf. Personal assistance activities include direct assistance with grooming, bathing, and eating, assistance with medications that are ordinarily self-administered, supervision, communication assistance, reporting changes in the waiver participant's condition and needs, household tasks essential to health care at home to include general cleaning of the home, laundry, meal planning and preparation, shopping, and correspondence. (4-4-13)

**b.** Day habilitation. Day habilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day habilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-4-13)

**16. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

**a.** Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (4-4-13)

**b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, payments that are passed through to beneficiaries of a supported employment program, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (4-4-13)

**17. Transition Services.** Transition services include goods and services that enable a participant residing in a nursing facility, hospital, IMD, or ICF/ID to transition to a community-based setting. A participant is eligible to receive transition services immediately following discharge from a qualified institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ( )

**a.** Qualified Institutions include the following: ( )

**i.** Skilled, or Intermediate Care Facilities; ( )

**ii.** Nursing Facility; ( )

**iii.** Licensed Intermediate Care Facility for the Persons with Intellectual Disabilities (ICF/ID); ( )

**iv.** Hospitals; and ( )

**v.** Institutions for Mental Diseases (IMD). ( )

**b.** Transition services may include the following goods and services: ( )

**i.** Security deposits that are required to obtain a lease on an apartment or home; ( )

**ii.** Cost of essential household furnishings, including furniture, window coverings, food preparation items, bed/bath linens, and second-hand kitchen appliances; ( )

**iii.** Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water; ( )

**iv.** Services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy; ( )

**v.** Moving expenses; and ( )

**vi.** Activities to assess need, arrange for and procure transition services. ( )

**c.** Excluded goods and services. Transition services do not include ongoing expenses, real property, ongoing utility charges, décor, or diversion/recreational items such as televisions, DVDs, and computers. ( )

**d.** Service limitations. Transition services are limited to a total cost of two thousand dollars (\$2,000) per participant and can be accessed every two (2) years, contingent upon a qualifying transition from an institutional

setting. Transition services are furnished only to the extent that the person is unable to meet such expense or when the support cannot be obtained from other sources. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**329. AGED AND DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

**02. Fiscal Intermediary Services.** An agency that has responsibility for the following: (5-8-09)

**a.** To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

**b.** To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

**c.** To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

**d.** To collect any participant participation due; (3-19-07)

**e.** To pay personal assistants and other waiver service providers for service; (3-19-07)

**f.** To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)

**g.** To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)

**h.** To maintain liability insurance coverage; (5-8-09)

**i.** To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)

**j.** To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)

**03. Provider Qualifications.** All providers of homemaker services, respite care, adult day health, transportation, chore services, companion services, attendant care, adult residential care, and home delivered meals must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's Aged and Disabled waiver as approved by CMS. (4-4-13)

**a.** A waiver provider cannot be a relative of any participant to whom the provider is supplying services. (3-19-07)

**b.** For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)

c. Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**04. Quality Assurance.** Providers of Aged and Disabled waiver services are responsible for ensuring that they provide quality services in compliance with applicable rules. (7-1-16)

a. The results of a quality assurance review conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. (7-1-16)

b. The provider must respond to the quality assurance review within forty-five (45) days after the results are received from the Department. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (7-1-16)

c. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. (7-1-16)

**05. HCBS Setting Compliance.** Providers of Aged and Disabled waiver services are responsible for ensuring that they meet the person-centered planning and setting quality requirements described in Sections 311 through 318 of these rules, as applicable, and must comply with associated Department quality assurance activities. (7-1-16)

**06. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

**07. Skilled Nursing Service.** Skilled nursing service providers must be licensed in Idaho as a licensed registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**08. Consultation Services.** Consultation services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (4-4-13)

**09. Adult Residential Care.** Adult residential care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," or IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

**10. Home Delivered Meals.** Providers of home delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

a. Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

b. Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

c. Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; (4-4-13)

d. The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments"; (4-4-13)

e. A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

f. Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule have been met. (4-4-13)

**11. Personal Emergency Response Systems.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory Standards, or equivalent standards. (4-4-13)

**12. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

a. Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (4-4-13)

b. Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-4-13)

c. Services provided in a residential adult living facility must be provided in a residential adult living facility that meets the standards identified in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-4-13)

d. Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

e. Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (4-4-13)

f. Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

g. All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**13. Non-Medical Transportation Services.** Providers of non-medical transportation services must: (4-4-13)

a. Possess a valid driver's license; (4-4-13)

b. Possess valid vehicle insurance; and (4-4-13)

c. Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**14. Attendant Care.** Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**15. Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and

background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” All providers of homemaker services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**16. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)

**17. Residential Habilitation Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies,” and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a. Direct service staff must meet the following minimum qualifications: (3-30-07)
  - i. Be at least eighteen (18) years of age; (3-30-07)
  - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - iii. Have current CPR and First Aid certifications; (3-30-07)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” (4-4-13)
  - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b. The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. (4-4-13)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (4-4-13)
  - i. Purpose and philosophy of services; (3-30-07)
  - ii. Service rules; (3-30-07)
  - iii. Policies and procedures; (3-30-07)
  - iv. Proper conduct in relating to waiver participants; (3-30-07)
  - v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
  - vi. Participant rights; (3-30-07)

- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
  - iii. Feeding; (3-30-07)
  - iv. Communication; (3-30-07)
  - v. Mobility; (3-30-07)
  - vi. Activities of daily living; (3-30-07)
  - vii. Body mechanics and lifting techniques; (3-30-07)
  - viii. Housekeeping techniques; and (3-30-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (4-4-13)

**18. Day Habilitation.** Providers of day habilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day habilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

- 19. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
- a.** Have received care giving instructions in the needs of the person who will be provided the service; (4-4-13)
  - b.** Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c.** Be free of communicable disease; and (4-4-13)
  - d.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**20. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meet State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Providers must also take a

traumatic brain injury training course approved by the Department. (4-4-13)

**21. Chore Services.** Providers of chore services must meet the following minimum qualifications: (4-4-13)

**a.** Be skilled in the type of service to be provided; and (4-4-13)

**b.** Demonstrate the ability to provide services according to a plan of service. (4-4-13)

**c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**d.** Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (4-4-13)

**22. Transition Services.** Transition managers as described in Section 350 of these rules are responsible for administering transition services. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**331. -- 349. (RESERVED)**

**350. TRANSITION MANAGEMENT.**

Transition management provides relocation assistance and intensive service coordination activities to assist nursing facility, hospital, IMD and ICF/ID residents to transition to community settings of their choice. Transition managers provide oversight and coordination activities for participants during a transitional period up to twelve (12) months following a return to the community. This provider type will function as a liaison between the participant, institutional or facility discharge staff, and the Department to support a successful and sustainable transition to the community. A participant is eligible to receive transition management when planning to discharge from a qualifying institution after residing within that institution for a minimum of forty-five (45) Medicaid-reimbursed days. ( )

**01. Provider Qualifications.** Transition managers must: ( )

**a.** Satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; ( )

**b.** Have documented successful completion of the Department approved Transition Manager training prior to providing any transition management and transition services; ( )

**c.** Have a Bachelor's Degree in a human services field from a nationally accredited university or college; or three (3) years' supervised work experience with the population being served; and ( )

**d.** Be employed with a provider type approved by the Department. ( )

**02. Service Description.** Transition management includes the following activities: ( )

**a.** A comprehensive assessment of health, social, and housing needs; ( )

**b.** Development of housing options with each participant, including assistance with housing choices, applications, waitlist follow-up, roommate selection, and introductory visits; ( )

**c.** Assistance with tasks necessary to accomplish a move from the institutional setting; ( )



d. Secure Transition Services in accordance with Subsection 326.17 or Subsection 703.15 of these rules in order to make arrangements necessary to move, including: ( )

i. Obtaining durable medical equipment, assistive technology, and medical supplies, if needed:( )

ii. Arranging for home modifications, if needed: ( )

iii. Applying for public assistance, if needed: ( )

iv. Arranging household preparations including scheduling moving and/or cleaning services, utility set-up, purchasing furniture, and household supplies, if needed: ( )

e. Coordinate with others involved in plan development for the participant to ensure successful transition and establishment in a community setting: ( )

f. Provide post-transition support, including assistance with problem solving, dependency and isolation concerns, consumer-directed services and supports, Medicaid Enhanced Plan Benefits when applicable, and community inclusion. ( )

03. Service Limitations. Transition management is limited to seventy-two (72) hours per participant per qualifying transition. ( )

**351. -- 449. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: (4-4-13)

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

**i.** Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

**ii.** Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

**iii.** Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

**iv.** Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities that are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services that consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

b. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

c. Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** Chore services include the following services when necessary to maintain the functional use of the home or to provide a clean, sanitary, and safe environment. (4-4-13)

a. Intermittent Assistance may include the following: (4-4-13)

i. Yard maintenance; (4-4-13)

ii. Minor home repair; (4-4-13)

iii. Heavy housework; (4-4-13)

iv. Sidewalk maintenance; and (4-4-13)

v. Trash removal to assist the participant to remain in the home. (4-4-13)

b. Chore activities may include the following: (4-4-13)

i. Washing windows; (4-4-13)

ii. Moving heavy furniture; (4-4-13)

iii. Shoveling snow to provide safe access inside and outside the home; (4-4-13)

iv. Chopping wood when wood is the participant's primary source of heat; and (4-4-13)

v. Tacking down loose rugs and flooring. (4-4-13)

c. These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them, or is responsible for their provision. (4-4-13)

d. In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (4-4-13)

**03. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature.

Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant's residence, the private home of the respite provider, the community, a developmental disabilities agency, or an adult day health facility. (4-4-13)

**04. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (4-4-13)

**a.** Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or the IDEA. (4-4-13)

**b.** Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that are not directly related to a waiver participant's supported employment program. (4-4-13)

**05. Non-Medical Transportation.** Non-medical transportation enables a waiver participant to gain access to waiver and other community services and resources. (4-4-13)

**a.** Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (4-4-13)

**b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (4-4-13)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (4-4-13)

**a.** The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (4-4-13)

**b.** Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (4-4-13)

**c.** Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (4-4-13)

**07. Specialized Medical Equipment and Supplies.** (4-4-13)

**a.** Specialized medical equipment and supplies include: (4-4-13)

**i.** Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (4-4-13)

**ii.** Items necessary for life support, ancillary supplies and equipment necessary for the proper

functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (4-4-13)

**b.** Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and exclude those items that are not of direct medical or remedial benefit to the participant. (4-4-13)

**08. Personal Emergency Response System (PERS).** PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable “help” button to allow for mobility. The system is connected to the participant’s phone and programmed to signal a response center once a “help” button is activated. The response center is staffed by trained professionals. This service is limited to participants who: (4-4-13)

**a.** Rent or own a home, or live with unpaid caregivers; (4-4-13)

**b.** Are alone for significant parts of the day; (4-4-13)

**c.** Have no caregiver for extended periods of time; and (4-4-13)

**d.** Would otherwise require extensive, routine supervision. (4-4-13)

**09. Home Delivered Meals.** Home delivered meals are meals that are delivered to a participant’s home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: (4-4-13)

**a.** Rents or owns a home; (4-4-13)

**b.** Is alone for significant parts of the day; (4-4-13)

**c.** Has no caregiver for extended periods of time; and (4-4-13)

**d.** Is unable to prepare a meal without assistance. (4-4-13)

**10. Skilled Nursing.** Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a licensed registered nurse licensed to practice in Idaho. (4-4-13)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services that provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Health.** Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. Adult day health cannot exceed thirty (30) hours per week, either alone or in combination with developmental therapy and occupational therapy. (4-4-13)

**13. Self-Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, “Consumer Directed Services.” (3-19-07)

**14. Place of Service Delivery.** Waiver services may be provided in home and community settings as described in Section 312 of these rules. Approved places of services include the participant's personal residence, a

certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (7-1-16)

- a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b. Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)
- c. Residential Care or Assisted Living Facility. (3-19-07)
- d. Additional limitations to specific services are listed under that service definition. (3-19-07)

**15. Transition Services. Transition Services as defined in Subsection 326.17 of these rules. ( )**

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation -- Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and must supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (4-4-13)

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i. Be at least eighteen (18) years of age; (3-19-07)
  - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - iii. Have current CPR and First Aid certifications; (3-19-07)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (4-4-13)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
  - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-19-07)
- b. All skill training for agency direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-29-12)

- i. Purpose and philosophy of services; (3-19-07)
- ii. Service rules; (3-19-07)
- iii. Policies and procedures; (3-19-07)
- iv. Proper conduct in relating to waiver participants; (3-19-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
- vi. Participant rights; (3-19-07)
- vii. Methods of supervising participants; (3-19-07)
- viii. Working with individuals with developmental disabilities; and (3-19-07)
- ix. Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-19-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
  - iii. Feeding; (3-19-07)
  - iv. Communication; (3-19-07)
  - v. Mobility; (3-19-07)
  - vi. Activities of daily living; (3-19-07)
  - vii. Body mechanics and lifting techniques; (3-19-07)
  - viii. Housekeeping techniques; and (3-19-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)
- 02. Residential Habilitation -- Certified Family Home (CFH). (3-29-12)**
  - a.** An individual who provides direct residential habilitation services in his own home must be certified by the Department to operate a certified family home under IDAPA 16.03.19, "Rules Governing Certified Family Homes," and must receive residential habilitation program coordination services provided through the Department, or its contractor, for the residential habilitation services he provides. (3-29-12)
  - b.** CFH providers providing residential habilitation services as a DD Waiver provider must meet the following minimum qualifications: (3-29-12)
    - i. Be at least eighteen (18) years of age; (3-29-12)
    - ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to

- a plan of service; (3-29-12)
- iii. Have current CPR and First Aid certifications; (3-29-12)
  - iv. Be free from communicable disease; (4-4-13)
  - v. Each CFH provider of residential habilitation services assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. (3-29-12)
  - vi. CFH providers of residential habilitation services who provide direct care and services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks;” and (3-29-12)
  - vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-29-12)
- c.** All skill training for CFH providers who are providing residential habilitation services must be provided through the Department or its contractor by qualified intellectual disabilities professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- d.** Prior to delivering residential habilitation services to a participant, the CFH provider must complete an orientation training in the following areas as provided by either the Department, or its contractor or both, and include the following areas: (3-29-12)
- i. Purpose and philosophy of services; (3-29-12)
  - ii. Service rules; (3-29-12)
  - iii. Policies and procedures; (3-29-12)
  - iv. Proper conduct in relating to waiver participants; (3-29-12)
  - v. Handling of confidential and emergency situation that involve the waiver participant; (3-29-12)
  - vi. Participant rights; (3-29-12)
  - vii. Methods of supervising participants; (3-29-12)
  - viii. Working with individuals with developmental disabilities; and (3-29-12)
  - ix. Training specific to the needs of the participant. (3-29-12)
- e.** Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include a minimum of the following: (3-29-12)
- i. Instructional Techniques: Methodologies for training in a systematic and effective manner; (3-29-12)
  - ii. Managing behaviors: techniques and strategies for teaching adaptive behaviors; (3-29-12)
  - iii. Feeding; (3-29-12)
  - iv. Communication; (3-29-12)

- v. Mobility; (3-29-12)
- vi. Activities of daily living; (3-29-12)
- vii. Body mechanics and lifting techniques; (3-29-12)
- viii. Housekeeping techniques; and (3-29-12)
- ix. Maintenance of a clean, safe, and healthy environment. (3-29-12)
- f. The Department or its contractor will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (3-29-12)
- 03. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)
  - a. Be skilled in the type of service to be provided; and (3-19-07)
  - b. Demonstrate the ability to provide services according to a plan of service. (3-19-07)
  - c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 04. Respite Care.** Providers of respite care services must meet the following minimum qualifications: (4-4-13)
  - a. Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
  - b. Demonstrate the ability to provide services according to a plan of service; (4-4-13)
  - c. Be free of communicable disease; and (4-4-13)
  - d. Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 05. Supported Employment.** Supported employment services must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meets State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)
- 06. Non-Medical Transportation.** Providers of non-medical transportation services must: (4-4-13)
  - a. Possess a valid driver's license; and (3-19-07)
  - b. Possess valid vehicle insurance. (3-19-07)
- 07. Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (4-4-13)
- 08. Specialized Medical Equipment and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment



and supplies that are the most cost-effective option to meet the participant's needs. (4-4-13)

**09. Personal Emergency Response System.** Personal emergency response system providers must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory standards, or equivalent standards. (4-4-13)

**10. Home Delivered Meals.** Providers of home-delivered meals must be a public agency or private business, and must exercise supervision to ensure that: (4-4-13)

**a.** Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (4-4-13)

**b.** Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (4-4-13)

**c.** A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (4-4-13)

**d.** The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (4-4-13)

**11. Skilled Nursing.** Skilled nursing service providers must be licensed in Idaho as a licensed registered nurse or licensed practical nurse in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-4-13)

**12. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

**a.** Work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (4-4-13)

**b.** Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)

**c.** Be a licensed pharmacist; or (3-19-07)

**d.** Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)

**e.** Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)

**f.** Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**13. Adult Day Health.** Providers of adult day health must meet the following requirements: (4-4-13)

**a.** Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; (4-4-13)

**b.** Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes"; (4-4-13)

**c.** Adult day health providers who provide direct care or services must satisfactorily complete a

criminal history check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks”; (4-4-13)

**d.** Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a certified family home other than the participant’s primary residence. The adult day health provider must provide care and supervision appropriate to the participant’s needs as identified on the plan. (4-4-13)

**e.** Adult day health providers who provide direct care or services must be free from communicable disease. (4-4-13)

**14. Service Supervision.** The plan of service that includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

**15. Transition Services.** Transition managers as described in Section 350 of these rules are responsible for administering transition services. ( )

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

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1803**

**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 56-202(b) and 56-264, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

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|--|
| <b>Tuesday, September 11, 2018<br/>1:30 p.m. - 2:30 p.m. MDT</b>   |
| <b>Idaho Department of Health and Welfare<br/>Medicaid Central Office<br/>Conference Room D-East<br/>3232 Elder Street<br/>Boise, ID 83705</b> |
| <b>WebEx INFORMATION</b>   |
| <b>Meeting Number (access code): 806 492 649<br/>Meeting Password: 5SdNeddP<br/>(if calling from phone for audio, 57363337)</b>                |
| <b>Conference Call INFORMATION</b>   |
| <b>Call In Only (not viewing meeting online): 1-240-454-0879<br/>Call In Only Password: 57363337</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 a nontechnical explanation of the substance and purpose of the proposed rulemaking

Medicaid staff currently process special rates for participants receiving tracheostomy or ventilator care manually. A Nursing Facility (NF) must submit documentation before or on the date the special rate is to take effect. Most ventilator and tracheostomy rates are similar in supplies and staffing and an average rate could be used instead. This would reduce administrative burden and reduce NF risk of nonpayment due to late special rate requests, allowing NF to receive timely and ongoing add-on rates for these participants. Rules are needed to simplify and streamline the current ventilator and tracheostomy special rate process to allow for less administrative burden, and to allow rates to start on the day of admission and with no semi-annual renewals.

The ventilator and tracheostomy rates will be adjusted to allow for a fixed add-on rate, incorporating supplies, nursing and CNA hours. The rates will be updated on a yearly basis to reflect the changing costs of supplies and the Weighted Average Hourly Rate (WAHR) for nursing and CNA hours. Ventilator and tracheostomy rates do not vary significantly in requested supplies and the amount of nursing and/or CNA hours. Providing a fixed rate will allow for facilities to submit a request for a ventilator or tracheostomy add-on rate for a participant that can be effective from the date of admission or when the rate is needed. It will enable providers to bill for the participant's entire length of stay without the need to submit documentation and renewal requests throughout the year. It will reduce the burden and risk for facilities and enhance the efficiency of Medicaid staff time.

**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 fiscal impact of this rulemaking is not expected to increase the Department's claims expenditures for special rates in nursing facilities. During state fiscal year (SFY) 2016, the Department paid \$2.4 million in claims (approximately \$1.68 million in federal funds and \$720,000 in state general funds) to provide special ventilator and tracheostomy care. The objective of a special rate for ventilator and tracheostomy care is to compile the costs of specialty supplies and additional nursing hours for this type of care. Historical data indicates that supplies and additional nursing hours have not varied significantly between participants or providers.

The Department proposes to implement fixed special rates based on the average of specialty supplies and additional nursing hours from the last fiscal year. Costs for supplies and nursing care have been and will remain subject to annual readjustment based on findings from the Weighted Average Hourly Rate (WAHR) survey and inflation adjustments for supplies.

Using the average of the historical rates is not expected to impact claims expenditures for the Department.

**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 June 6, 2018, Idaho Administrative Bulletin, **Vol. 18-6, pages 59 and 60.**

**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 proposed rule, contact Alex Childers-Scott at (208) 364-1891.

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, September 26, 2018.

Dated this 2nd day of August, 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  
E-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**270. NURSING FACILITY: SPECIAL RATES.**

A special rate consists of a facility's daily reimbursement rate for a patient plus an add-on amount. Section 56-117, Idaho Code, provides authority for the Department to pay facilities an amount in addition to the daily rate when a patient has needs that are beyond the scope of facility services and when the cost of providing for those additional needs is not adequately reflected in the rates calculated. This special rate add-on amount for such specialized care is in addition to any payments made in accordance with other provisions of this chapter and is excluded from the computation of payments or rates under other provisions in these rules. (4-4-13)

**01. Determination.** The Department determines to approve a special rate on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request must be based on an identified condition that will continue for a period greater than thirty (30) days. (3-4-11)

**02. Effective Date.** Upon approval, a special rate is effective on the date the application was received. (3-4-11)

**03. Reporting.** Costs equivalent to payments for special rate add-on amounts must be removed from the cost components subject to limits, and be reported separately by the provider. (3-19-07)

**04. Limitation.** A special rate cannot exceed the provider's charges to other patients for similar services. (3-19-07)

**05. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 270.06 and 270.07 of this rule provide clarification of how special rates are paid under the prospective payment system. (4-4-13)

**06. Determination of Payment for Qualifying Residents.** Special rate add-on amounts are calculated using one (1) of the methods described in Subsections 270.06.a. through 270.06.c. of this rule. (4-4-13)

**a.** One Hundred Percent (100%) Special Care Facility Existing July 1, 2000. If on July 1, 2000, an entire facility was a special care unit that included Medicaid residents, the facility's direct care cost per diem will not be subject to the direct care cost limit. However, the direct care costs are case mix adjusted based on the ratio of the facility's Medicaid CMI for the rate period to the facility-wide CMI for the cost reporting period. (3-19-07)

**b.** Equipment and Non-Therapy Supplies. Equipment and non-therapy supplies not addressed in Section 225 of these rules as determined by the Department, are reimbursed in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 755, as an add-on amount. (4-4-13)

**c.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care. Nursing facilities providing care to residents who are ventilator-dependent or who receive tracheostomy care are eligible to submit requests for the fixed add-on amount, in addition to the facility's rate for residents receiving this type of care. Approved requests are effective the date the type of care is needed by the participant, or no earlier than sixty (60) days prior to the date the request is received by the Department. The rate includes the cost for equipment and supplies and for additional registered nurse and certified nursing assistant hours, as appropriate for each type of care. Costs for equipment and supplies will be adjusted annually for inflation, and registered nurse and certified nursing assistant costs will be adjusted according to the annual Weighted Average Hourly Rates (WAHR) survey results. ( )

**i.** Approved add-on rates for ventilator-dependent residents and residents receiving tracheostomy care are subject to annual reviews by the Department to ensure that the add-on rate remains necessary for the type of care needed by the resident. ( )

**ii.** The provider must inform the department if an approved add-on rate is no longer needed or if the resident requires a change from one type of care to another. ( )

**ed.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care in Out-of-State Nursing Facilities. In the case of For residents who are ventilator-dependent and who or receive tracheostomy care in an out-of-state facility, the special add-on amount to the facility's rate for approved residents receiving this care, is determined by combining the following two (2) components is effective the date this type of care is needed by the participant or no earlier than sixty (60) days prior to the date the request is received by the Department. The add-on rate will include: (4-4-13)( )

**i.** Calculation of a staffing add-on for the cost, if any, for additional direct care staff required in meeting the exceptional needs of these residents. The hourly add-on rate is equal to the current WAHR CNA or current WAHR RN wage rate plus a benefits allowance based on annual cost report data, then weighted to remove the CNA minimum daily staffing time adjusted for the appropriate skill level of care staff; and (4-4-13)

ii. Calculation of an add-on for equipment and non-therapy supplies following the provisions in Subsection 270.06.b. of this rule. (4-4-13)

**07. Treatment of the Special Rate Cost for Future Rate Setting Periods.** Special rates are established on a prospective basis similar to the overall facility rate. When the cost report used to set a prospective rate contains special rate costs, an adjustment is made to “offset,” or reduce costs by an amount equal to total incremental revenues, or add-on payments received by the provider during the cost reporting period. The amount received is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. No related adjustment is made to the facility's CMIs. (4-4-13)

**08. Special Rate for Providers that Change Ownership or Close.** When a facility changes ownership or closes, a closing cost report is not required. Special rate payments made in the closing cost reporting period may be reviewed by the Department. (4-4-13)

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

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1804**

**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 56-202(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

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|--|
| <b>PUBLIC HEARING</b>  |
| <b>Monday, September 24, 2016 - 10:00 a.m. (MDT)</b>   |
| <b>Department of Health &amp; Welfare<br/>Medicaid Central Office<br/>3232 Elder Street<br/>Conference Room D-West<br/>Boise, ID 83705</b> |
| <b>TELECONFERENCE CALL-IN</b>  |
| <b>Toll Free: 1-877-820-7831<br/>Participant Code: 701700</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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Currently, IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits” specifies a list of covered organ transplants. As medical science has advanced, the procedures accepted as standard treatment have surpassed what rule allows. Section 56-255, Idaho Code, requires Medicaid to cover medically necessary services, and coverage has been approved under the allowance in IDAPA 16.03.09, “Medicaid Basic Plan Benefits” for coverage of investigational services for life-threatening medical conditions without other treatment options, or through Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) services for children under 21. This rulemaking aligns these rules with statute.

**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 fiscal impact of expanding lung organ transplants to include participants over the age of 21, and covering liver transplants from live donors would be cost neutral as current requests are paid under investigational services.

**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 June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 61 and 62](#).

**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 proposed rule, contact William Deseron 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, September 26, 2018.

Dated this 2nd day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1804  
(Only Those Sections With Amendments Are Shown.)

SUB AREA: ENHANCED HOSPITAL SERVICES  
(Sections 090 - 099)

090. ORGAN TRANSPLANTS.

The Department ~~may will~~ reimburse for organ transplant services ~~for bone marrows, kidneys, hearts, intestines, and livers as detailed in the Idaho Medicaid Provider Handbook, when medically necessary and~~ provided by hospitals approved by the Centers for Medicare and Medicaid for the Medicare program that have completed a provider agreement with the Department. ~~The Department may reimburse for cornea transplants for conditions where such transplants have demonstrated efficacy.~~ (3-19-07)(    )

091. -- 092. (RESERVED)

093. ORGAN TRANSPLANTS: COVERAGE AND LIMITATIONS.

01. ~~Kidney Transplants Coverage Limitations. Kidney transplant surgery~~ **No organ transplant** will be covered ~~only in a renal transplantation facility participating in the Medicare program after meeting the criteria specified in 42 CFR 405 Subpart U. Facilities performing kidney transplants must belong to one (1) of the End Stage Renal Dialysis (ESRD) network area's organizations designated by the Secretary of Health and Human Services for Medicare certification by the Medical Assistance Program unless prior authorized by the Department, or its designee. Coverage is limited to organ transplants performed for the treatment of medical conditions in accordance with evidence-based standards of care.~~ (3-19-07)(    )

02. **Living Kidney Donor Costs.** The transplant costs for actual or potential living ~~kidney~~ donors are fully covered by Medicaid and include all ~~reasonable~~ **medically necessary** preparatory, operation, and post-operation recovery expenses associated with the donation. Payments for post-operation expenses of a donor will be limited to the period of actual recovery. (3-19-07)(    )

~~03. **Intestinal Transplants.** Intestinal transplant surgery will be covered only for patients with irreversible intestinal failure, and who have failed total parenteral nutrition.~~ (3-19-07)



- ~~04. Coverage Limitations. (3-19-07)~~
- ~~a. Multi-organ transplants may be covered when: (3-19-07)~~
- ~~i. The primary organ defect caused damage to a second organ and transplant of the primary organ will eliminate the disease process; and (3-19-07)~~
- ~~ii. The damage to the second organ will compromise the outcome of the transplant of the primary organ. (3-19-07)~~
- ~~b. Each kidney or lung is considered a single organ for transplant; (3-19-07)~~
- ~~c. Re-transplants will be covered only if the original transplant was performed for a covered condition and if the re-transplant is performed in a Medicare/Medicaid approved facility; (3-19-07)~~
- ~~d. A liver transplant from a live donor will not be covered by the Medical Assistance Program; (3-19-07)~~
- ~~e. No organ transplants covered by the Medical Assistance Program unless prior authorized by the Department, and performed for the treatment of medical conditions where such transplants have a demonstrated efficacy. (3-19-07)~~
- ~~05. Follow Up Care. Follow up care to a participant who received a covered organ transplant may be provided by a Medicare/Medicaid participating hospital not approved for organ transplantation. (3-19-07)~~

094. -- 095. (RESERVED)

**096. ORGAN TRANSPLANTS: PROVIDER REIMBURSEMENT.**

Organ transplant, and procurement services, and follow-up care by facilities approved for kidneys, bone marrow, liver, or heart will be reimbursed the lesser of ninety-six and a half percent (96.5%) of reasonable costs under Medicare payment principles or customary charges as specified in the provider agreement. Follow-up care provided to an organ transplant patient by a provider not approved for organ transplants will be reimbursed at the provider's normal reimbursement rates. Reimbursement to Independent O for organ Pprocurement Agencies and Independent Hhistocompatibility Llaboratoriesy tests will not be covered made to the facility performing the transplant. (3-19-07)( )