

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 16.05.06 - Criminal History and Background Checks - Temporary and Proposed Rule
(Docket No. 16-0506-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 07/30/2018. 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 08/27/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee
FROM: Principal Legislative Research Analyst - Elizabeth Bowen
DATE: July 11, 2018
SUBJECT: Department of Health and Welfare

IDAPA 16.05.06 - Criminal History and Background Checks - Temporary and Proposed Rule (Docket No. 16-0506-1801)

Summary and Stated Reasons for the Rule

This temporary and proposed rule for the Department of Health and Welfare adds individuals who provide substance use disorders services to the list of those persons subject to a criminal history and background check by the Department. The purpose of this rule is to conform to the requirements of IDAPA 16.07.17, which requires a criminal history and background check for these individuals.

The Governor finds that adoption of the temporary rule is justified, as it is necessary to protect the public health, safety, or welfare.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted due to time constraints. There is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

I.C. 56-1004A

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

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1801

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

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

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Title 15 Chapter 5, Title 66 Chapter 4, Title 39 Chapter 3, Chapter 31, and Chapter 46, Title 56 Chapter 2, and Section 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

DHW has identified a new class of individuals that must complete a DHW criminal history and background check due to the adoption of IDAPA 16.07.17, “Substance Use Disorders Services.” This class of individuals must be added to the chapter ensure that the Department of Health and Welfare retains the statutory authority to complete those background checks.

The Department’s Bureau of Emergency Medical Services has determined that the requirement to have its applicants processed as an enhanced background check is counterproductive to the needs of the EMS community as these background checks take longer to process due to the additional research required. The Bureau of Emergency Medical Services will still require their applicants to pass a DHW background check but needs to have them removed from the chapter.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: (a) it is necessary to protect the public health, safety, or welfare; and (b) it complies with deadlines in amendments to governing law or federal programs.

Due to the nature of the state administrative rulemaking process, when a DHW program makes changes to their rules, and those changes are approved and enacted by the state Legislature, DHW must change all other rules affected by those changes at the earliest possible opportunity. This temporary rule change is being sought to ensure that DHW retains the statutory authority to complete any new background check requirements, or, to cease any efforts to complete them once it has been determined that they are no longer required or needed.

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:

There is no fiscal impact to the State General Fund or to dedicated funds for these rule changes. The monies needed for this change are already part of the Department's operational budget dedicated to the maintenance and operations of its web-based background check system. The Department will not increase the background check fee to the applicant with this change making it cost-neutral to the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible due to the short time frame to implement these changes.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Fernando Castro, (208) 332-7999.

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 July 25, 2018.

DATED this 5th day of June, 2018.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0506-1801
(Only Those Sections With Amendments Are Shown.)**

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

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

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

02. Behavioral Health Community Crisis Centers. Individuals who must comply with IDAPA 16.07.30, “Behavioral Health Community Crisis Centers.” (4-6-15)

03. Behavioral Health Programs. Individuals who must comply with IDAPA 16.07.15, “Behavioral Health Programs.” (3-24-17)

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

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

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

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

- 08. Court Appointed Guardians and Conservators.** Individuals who must comply with the requirements of Title 15, Chapter 5, Idaho Code, and Title 66, Chapter 4, Idaho Code. Court required guardian and conservator criminal history and background checks are not provided Department clearances described in Section 180.01 of these rules. (3-20-14)
- 09. Designated Examiners and Designated Dispositioners.** Individuals who must comply with IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (3-4-11)
- 10. Developmental Disabilities Agencies.** Individuals who must comply with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)
- 11. Emergency Medical Services (EMS).** Individuals who must comply with IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements," and IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements." (3-24-17)
- 12. High Risk Providers of Medicaid.** Individuals who must comply with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and the Medicaid Provider Handbook. (4-6-15)
- 13. Home and Community-Based Services (HCBS).** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (7-1-12)
- 14. Home Health Agencies.** Individuals who must comply with IDAPA 16.03.07, "Home Health Agencies." (3-4-11)
- 15. Idaho Behavioral Health Plan (IBHP).** Individuals who are contractors, contractor's employees, and subcontractors in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (4-6-15)
- 16. Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." (3-4-11)
- 17. Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID).** Individuals who must comply with IDAPA 16.03.11, "Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID)." (3-4-11)
- 18. Licensed Foster Care.** Individuals who must comply with Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)
- 19. Licensed Day Care.** Individuals who must comply with Sections 39-1105, 39-1113, and 39-1114, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-4-11)
- 20. Mental Health Services.** Individuals who must comply with IDAPA 16.07.33, "Adult Mental Health Services," and IDAPA 16.07.37, "Children's Mental Health Services." (4-6-15)
- 21. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.** Individuals who must comply with IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units." (3-4-11)
- 22. Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)
- 23. Personal Care Service Providers.** Individuals who must comply with Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-4-11)
- 24. Residential Care or Assisted Living Facilities in Idaho.** Individuals who must comply with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (3-4-11)

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

26. Skilled Nursing and Intermediate Care Facilities. Individuals who must comply with IDAPA 16.03.02, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities.” (3-4-11)

27. Substance Use Disorders Services. Individuals who must comply with IDAPA 16.07.17, “Substance Use Disorders Services.” (7-1-18)T

~~27~~8. Support Brokers and Community Support Workers. Individuals who must comply with IDAPA 16.03.13, “Consumer-Directed Services.” (3-4-11)

(BREAK IN CONTINUITY OF SECTIONS)

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. (7-1-17)

- 01. Adoptive Parent Applicants.** Described in Subsection 100.01 of these rules. (7-1-17)
- 02. Behavioral Health Community Crisis Centers.** Described in Subsection 100.02 of these rules. (7-1-17)
- 03. Behavioral Health Programs.** Described in Subsection 100.03 of these rules. (7-1-17)
- 04. Children’s Residential Care Facilities.** Described in Subsection 100.05 of these rules. (7-1-17)
- 05. Children’s Therapeutic Outdoor Programs.** Described in Subsection 100.06 of these rules. (7-1-17)
- ~~06. Emergency Medical Services (EMS). Described in Subsection 100.11 of these rules. (7-1-17)~~**
- ~~07~~6. Idaho Child Care Program (ICCP).** Described in Subsection 100.16 of these rules. (7-1-17)
- ~~08~~7. Licensed Foster Care.** Described in Subsection 100.18 of these rules. (7-1-17)
- ~~09~~8. Licensed Day Care.** Described in Subsection 100.19 of these rules. (7-1-17)
- ~~10~~9. Mental Health Services.** Described in Subsection 100.20 of these rules. (7-1-17)
- ~~11~~0. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.** Described in Subsection 100.21 of these rules. (7-1-17)
- 11. Substance Use Disorders Services. Described in Subsection 100.27 of these rules. (7-1-18)T**