



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators MARTIN, Souza, Jordan and,
Representatives WOOD, Wagoner, Chew

FROM: Elizabeth Bowen - Principal Legislative Drafting Attorney

DATE: January 02, 2019

SUBJECT: Temporary Rule

IDAPA 16.05.06 - Criminal History and Background Checks - Adoption of Temporary Rule - Docket
No. 16-0506-1901

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Elizabeth Bowen at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1901

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2019.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code; Section 16-1647, Idaho Code; and 42 USC Section 9858f.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The Idaho Legislature passed Senate Bill 1341 during the 2018 legislative session that amended the Child Protective Act and went into effect on Sine Die, March 28, 2018. Under this bill, a new Section 16-1647, Idaho Code, was added to the Child Protective Act; it mandated the creation of Citizen Review Panels in each of the state's public health districts, comprised of volunteers who are required to review all child protective act cases open for 120 days or more. On a quarterly basis, the panels evaluate and report on recommendations to the Idaho Legislature for the improvement of the child protection system experience for children. This law requires that panel members must pass a criminal background check.

This rule change amends this chapter to authorize the Department of Health and Welfare's Criminal History Unit, to complete background checks on Citizen Review Panel Members to assist Public Health Districts to fulfill the mandates of Section 16-1647, Idaho Code. Suitability of applicant qualification are determined by each Health District. The Criminal History Unit participates only in the processing of background checks.

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 to protect the public health, safety, or welfare, and to comply with deadlines in amendments to governing law. In this case, both justifications support compliance with Section 16-1647, Idaho Code, a statute that requires criminal history and background checks for volunteers serving on Citizen Review Panels for Idaho's public health districts.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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:

The effect of this rule change is cost-neutral to the State General Fund. The Department expects to process not more than 50 background checks for Citizen Review Panel volunteers in SFY 2019 and successive years. The background check fee to be collected for each one is sufficient to cover their costs.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Fernando Castro at (208) 332-7999.

Dated this 16th day of November, 2018.

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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 16-0506-1901
(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. Citizen Review Panel Members. Public health district volunteers who must comply with Section 16-1647, Idaho Code, "Citizen Review Panels - Child Protection Legislative Review Panel." (1-1-19)T

~~**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)

~~**10.**~~ **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)

- 145.** **Home Health Agencies.** Individuals who must comply with IDAPA 16.03.07, “Home Health Agencies.” (3-4-11)
- 156.** **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)
- 167.** **Idaho Child Care Program (ICCP).** Individuals who must comply with IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program.” (3-4-11)
- 178.** **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)
- 189.** **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)
- 1920.** **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)
- 201.** **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)
- 212.** **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)
- 223.** **Personal Assistance Agencies.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
- 234.** **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)
- 245.** **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)
- 256.** **Service Coordinators and Paraprofessional Providers.** Individuals who must comply with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-4-11)
- 267.** **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)
- 278.** **Substance Use Disorders Services.** Individuals who must comply with IDAPA 16.07.17, “Substance Use Disorders Services.” (7-1-18)T
- 289.** **Support Brokers and Community Support Workers.** Individuals who must comply with IDAPA 16.03.13, “Consumer-Directed Services.” (3-4-11)