

Dear Senators PATRICK, Guthrie, Ward-Engelking, and  
Representatives BARBIERI, Clow, Smith:

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

IDAPA 18.01.30 - Individual Disability and Group Supplemental Disability Insurance Minimum  
Standards Rule - Proposed Rule (Docket No. 18-0130-1801);

IDAPA 18.01.70 - Rules Governing Small Employer Health Insurance Availability Act Plan Design -  
Proposed Rule (Docket No. 18-0170-1801).

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 11/30/2018. 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 12/31/2018.

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

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### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

**FROM:** Principal Legislative Drafting Attorney - Elizabeth Bowen

**DATE:** November 09, 2018

**SUBJECT:** Department of Insurance

IDAPA 18.01.30 - Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule - Proposed Rule (Docket No. 18-0130-1801)

IDAPA 18.01.70 - Rules Governing Small Employer Health Insurance Availability Act Plan Design - Proposed Rule (Docket No. 18-0170-1801)

#### **Summary and Stated Reasons for the Rule**

Docket No. 18-0130-1801: This rule clarifies that an individual insurance policy shall not exclude coverage for hearing aids and similar devices, and related services, for covered dependent children with congenital or acquired hearing loss that, without intervention, may result in cognitive or speech development deficits. This rule change is being made as a result of House Concurrent Resolution 45 (2018), which requested that the Department of Insurance work with leaders in the insurance industry to ensure the availability of medically necessary hearing devices and related services for Idaho children.

Docket No. 18-0170-1801: This rule is the same as the above rule, except that it applies to small group insurance policies.

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

Negotiated rulemaking was conducted for both rules, and there is no anticipated negative fiscal impact on the state general fund for either rule.

#### **Statutory Authority**

I.C. 41-211, 41-4207, and 41-4715.

cc: Department of Insurance  
Thomas A. Donovan

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

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

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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 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.30 – INDIVIDUAL DISABILITY AND GROUP SUPPLEMENTAL DISABILITY INSURANCE MINIMUM STANDARDS RULE

DOCKET NO. 18-0130-1801

#### 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 41-211 and 41-4207, 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 October 17, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking follows House Concurrent Resolution 45 adopted in 2018 and some meetings that have already occurred with the Department of Insurance. Health insurers have not covered hearing aids for children based on exclusionary language in this rule addressing the individual market. This rulemaking seeks to revise language related to exclusions for hearing aids so that hearing loss interventions will be covered with certain parameters. (This rule impacts individual insurance coverage; companion rulemaking will address the small group market in IDAPA 18.01.70.)

**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 resulting from this rulemaking: N/A

**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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 134](#). Public meetings were held July 23 and September 6, 2018.

**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 Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

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 October 24, 2018.

Dated this 7th day of September, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0130-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**011. PROHIBITED POLICY PROVISIONS.**

**01. Probationary or Waiting Period.** Except as provided in Subsection 004.10 pertaining to the definition of a preexisting condition, a policy shall not contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy. Accident policies shall not contain probationary or waiting periods. (3-30-01)

**02. Additional Coverage as Dividend.** A policy or rider for additional coverage may not be issued as a dividend unless an equivalent cash payment is offered as an alternative to the dividend policy or rider. A dividend policy or rider for additional coverage shall not be issued for an initial term of less than six (6) months. (3-30-01)

**a.** The initial renewal subsequent to the issuance of a policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional. (3-30-01)

**03. Return of Premium or Cash Value Benefit.** A disability income policy, accident only policy, limited benefit policy, specified disease policy or hospital confinement indemnity policy may contain a “return of premium” or “cash value benefit” so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy, and the insurer demonstrates that the reserve basis for the policies is adequate. No other policy subject to this rule shall provide a return of premium or cash value benefit, except return of unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds. (3-28-18)

**04. Federally Operated Hospital.** Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government. (3-30-01)

**05. Exclusions.** A policy shall not limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows: (3-30-01)

- a.** Preexisting conditions or diseases, except for congenital anomalies of a covered dependent child; (3-30-01)
- b.** Mental or emotional disorders, alcoholism and drug addiction; (3-30-01)
- c.** Pregnancy, except for complications of pregnancy; (3-30-01)
- d.** Illness, treatment or medical condition arising out of: (3-30-01)
  - i.** War or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxiliary to it; (3-30-01)
  - ii.** Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; (3-30-01)
  - iii.** Aviation; (3-30-01)
  - iv.** With respect to short-term nonrenewable policies, interscholastic sports; and (3-30-01)
  - v.** With respect to disability income protection policies, incarceration. (3-30-01)

**e.** Cosmetic surgery, except that “cosmetic surgery” shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child; (3-30-01)

**f.** Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet; (3-30-01)

**g.** Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects of it, where the interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column; (3-30-01)

**h.** Benefits provided under Medicare or other governmental program (except Medicaid), a state or federal worker’s compensation law, employers liability or occupational disease law, or motor vehicle no-fault law; services performed by a member of the covered person’s immediate family; and services for which no charge is normally made in the absence of insurance; (3-30-01)

**i.** Dental care or treatment; (3-30-01)

**j.** Eye glasses, ~~hearing aids~~, and examination for the prescription, or fitting of them; ~~(3-30-01)~~( )

**k.** Rest cures, custodial care, transportation, and routine physical examinations; ~~and (3-30-01)~~( )

**l.** Territorial limitations: ~~and (3-30-01)~~( )

**m.** Hearing aids, auditory osseointegrated (bone conduction) devices, cochlear implants and examination for or fitting of them, except for congenital or acquired hearing loss that without intervention may result in cognitive or speech development deficits of a covered dependent child, covering not less than one (1) device every thirty-six (36) months per ear with loss and not less than forty-five (45) language/speech therapy visits during the first twelve (12) months after delivery of the covered device. ( )

**06. Authority of Director to Disapprove.** Policy provisions precluded in Section 011 shall not be construed as a limitation on the authority of the Director to disapprove other policy provisions in accordance with Chapters 21, 22 and 42 of Title 41 of the Idaho Code, or that in the opinion of the Director are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy. (3-30-01)

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.70 – RULES GOVERNING SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT PLAN DESIGN

DOCKET NO. 18-0170-1801

#### 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 41-211 and 41-4715, 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 October 17, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking follows House Concurrent Resolution 45 adopted in 2018 and some meetings that have already occurred with the Department of Insurance. Health insurers have not covered hearing aids for children based on exclusionary language in this rule addressing the small group market. This rulemaking seeks to revise language related to exclusions for hearing aids so that hearing loss interventions will be covered within certain parameters. (This rule is a companion rule to that affecting the individual insurance market IDAPA 18.01.30.)

**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 resulting from this rulemaking: N/A

**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 July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 139](#). Public meetings were held July 23 and September 6, 2018.

**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 Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

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 October 24, 2018.

Dated this 7th day of September, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0170-1801  
(Only Those Sections With Amendments Are Shown.)

**016. LIMITATIONS AND EXCLUSIONS.**

A health benefit plan shall not limit or exclude coverage by type of illness, accident, treatment, or medical condition, except as follows: ( )

- 01. Services Not Medically Necessary.** Excluded. Any service not medically necessary or appropriate unless specifically included within the coverage provisions. (1-25-95)
- 02. No Coverage.** Custodial, convalescent or intermediate level care or rest cures. (1-25-95)
- 03. Experimental or Investigational.** Services which are experimental or investigational. (1-25-95)
- 04. Workers' Compensation, Medicare, CHAMPUS.** Services eligible for coverage by Workers' Compensation, Medicare or CHAMPUS. (1-25-95)
- 05. No Charges.** Services for which no charges are made or for which no charges would be made in the absence of insurance or for which the insured has no legal obligation to pay. (1-25-95)
- 06. No Medical Diagnosis.** Services for weight control, nutrition, and smoking cessation, including self-help and training programs as well as prescription drugs, used in conjunction with such programs and services. (7-1-98)
- 07. Cosmetic Surgery.** Cosmetic surgery and services, except for treatment or surgery for congenital anomaly. Mastectomy reconstruction is covered as described in the Women's Health and Cancer Rights Act. (3-15-02)
- 08. Artificial Insemination, Infertility, Sexual Dysfunction.** Artificial insemination and infertility treatment. Treatment of sexual dysfunction not related to organic disease. (1-25-95)
- 09. Induced Infertility.** Services for reversal of elective, surgically or pharmaceutically induced infertility. (1-25-95)
- 10. Vision.** Vision therapy, tests, glasses, contact lenses and other vision aids. Radial keratotomy, myopic keratomileusis and any surgery involving corneal tissue to alter or correct myopia, hyperopia or stigmatic error. Vision tests and glasses will be covered for children under the age of twelve (12), except in catastrophic health benefit plans. (7-1-98)
- 11. Limitation Foot Care.** For treatment of weak, strained, or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal, or treatment of corns, calluses, or nails other than corrective surgery, or for metabolic or peripheral vascular disease. (7-1-98)
- 12. Manipulative Therapy and Related Treatment.** Manipulative therapy and related treatment, including heat treatments and ultrasound, of the musculoskeletal structure for other than fractures and dislocations of the extremities will be subject to one thousand dollars (\$1,000) per year limit, subject to the policy deductible, co-insurance, or co-payment. (4-5-00)
- 13. Dental, Orthodontic Services.** (7-1-98)
- a.** For Basic and Standard plans: Dental and orthodontic services, except those needed for treatment of a medical condition or injury or as specifically allowed in the policy for children under the age of twelve (12). (7-1-98)



- b. For Catastrophic plans: Dental care or treatment, except for injury sustained while insured under this policy, or as a result of nondental disease covered by the policy. (7-1-98)
14. **Hearing Tests.** Hearing tests without illness being suspect. (1-25-95)
15. **Hearing Aids—~~Supplies~~.** Hearing aids, auditory osseointegrated (bone conduction) devices, cochlear implants and supplies, tinnitus maskers, cochlear implants and exams examination for the prescription or fitting of hearing aids them, except for congenital or acquired hearing loss that without intervention may result in cognitive or speech development deficits of a covered dependent child, covering not less than one (1) device every thirty-six (36) months per ear with loss and not less than forty-five (45) language/speech therapy visits during the first twelve (12) months after delivery of the covered device. (~~1-25-95~~)(      )
16. **Speech Tests.** Speech tests and therapy except as specifically allowed in the policy for children under the age of twelve (12). (1-25-95)
17. **Private Room Accommodation Charges.** Private room accommodation charges in excess of the institution's most common semi-private room charge except when prescribed as medically necessary. (1-25-95)
18. **Services Performed by a Member of the Insured's Family.** Services performed by a member of the insured's family or of the insured's spouse's family. Family includes parents or grandparents of the insured or spouse and any descendants of such parents or grandparents. (1-25-95)
19. **No Coverage Prior to Effective Date of Coverage.** Care incurred before the effective date of the person's coverage. (1-25-95)
20. **Covered Injury or Disease.** Immunizations and medical exams and tests of any kind not related to treatment of covered injury or disease, except as specifically stated in the policy. (1-25-95)
21. **Act of War or Armed Conflict.** Injury or sickness caused by war or armed international conflict. (1-25-95)
22. **Operation and Treatment, Sexual Change.** Sex change operations and treatment in connection with transsexualism. (1-25-95)
23. **Counseling.** Marriage and family and child counseling except as specifically allowed in the policy. (1-25-95)
24. **Acupuncture.** (7-1-98)
- a. For Basic and Standard plans: Acupuncture except when used as anesthesia during a covered surgical procedure. (7-1-98)
- b. For Catastrophic plans: Acupuncture. (7-1-98)
25. **Private Duty Nursing.** Private duty nursing except as specifically allowed in the policy. (1-25-95)
26. **Employer Maintained Medical or Dental Care.** Services received from a medical or dental department maintained by or on behalf of an employer, a mutual benefit association, labor union, trust, or similar person or group. (1-25-95)
27. **Termination.** Services incurred after the date of termination of a covered person's coverage except as allowed by the extension of benefits provision of the policy, if any. (7-1-98)
28. **Personal Convenience Items.** Expenses for personal hygiene and convenience items such as air conditioners, humidifiers, and physical fitness equipment. (1-25-95)

- 29. Failure to Keep a Scheduled Visit.** Charges for failure to keep a scheduled visit, charges for completion of any form, and charges for medical information. (1-25-95)
- 30. Screening Examinations.** Charges for screening examinations except as otherwise provided in the policy. (1-25-95)
- 31. No Allowance.** Charges for wigs or cranial prostheses, hair analysis, hair loss and baldness. (1-25-95)
- 32. Preexisting Conditions.** Pre-existing conditions, except as provided specifically in the policy. (1-25-95)