

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Board of Medicine:

IDAPA 22.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket  
No. 22-0000-1900).

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 07/17/2019. 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 08/14/2019.

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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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Legislative Drafting Attorney - Matt Drake

**DATE:** June 27, 2019

**SUBJECT:** Board of Medicine

IDAPA 22.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket No. 22-0000-1900)

The Idaho Board of Medicine submits notice of temporary and proposed rules at IDAPA 22.01.05 – General Provisions of the Board of Medicine. The rulemaking adopts and re-publishes the existing and previously approved chapter in full. **No substantive changes are noted.**

This is not a fee rule.

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation.

cc: Board of Medicine  
Anne Lawler

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

Per the Idaho Constitution, all administrative rules may 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 22 – BOARD OF MEDICINE**

**DOCKET NO. 22-0000-1900**

### **NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1806(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 22, rules of the Board of Medicine:

**IDAPA 22**

- 22.01.05, *General Provisions of the Board of Medicine*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Board of Medicine regulates medical professionals, including physicians, osteopathic physicians, physician assistants, dietitians, athletic trainers and respiratory therapists, all of whom have direct contact with the citizens of Idaho. These professional licensees under the Board of Medicine are all charged with providing safe health care that conforms to the community standard of care. These previously approved and codified rules set forth the detailed requirements for licensure and practice of these medical professionals to the standards necessary to maintain the health, safety, and welfare of the citizens of Idaho.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anne K. Lawler, Executive Director, at (208) 327-7000.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Anne K. Lawler, JD, RN, Executive Director  
Idaho State Board of Medicine  
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Boise, Idaho 83706  
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**IDAPA 22  
TITLE 01  
CHAPTER 05**

**22.01.05 – GENERAL PROVISIONS OF THE BOARD OF MEDICINE**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Sections 54-1806(2), and 54-5713, Idaho Code. (4-11-19)

**001. TITLE AND SCOPE.**

The title of this chapter is IDAPA 22.01.05, “General Provisions of the Board of Medicine.” This chapter has the following scope: these rules govern general aspects of Board of Medicine operations, complaint investigation and telehealth services. (4-11-19)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.**

In accordance with Title 67, Chapter 52, Idaho Code, this agency may have written statements that pertain to the interpretation of, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Board of Medicine office. (4-11-19)

**003. ADMINISTRATIVE APPEAL.**

All contested cases will be governed by the provisions of IDAPA 04.11.01, “Idaho Rules of Administrative Procedures of the Attorney General.” (4-11-19)

**004. PUBLIC RECORD ACT COMPLIANCE.**

These rules have been adopted in accordance with Title 67, Chapter 52, Idaho Code and are public records. (4-11-19)

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board of Medicine is in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 345 W. Bobwhite Court, Suite 150, Boise, ID 83706. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 377-7005. The Board's office hours for filing documents are 8:00 a.m. to 5:00 p.m. (4-11-19)

**006. FILING OF DOCUMENTS – NUMBER OF COPIES.**

All original documents and one (1) electronic copy in rulemaking or contested case proceedings must be filed with the office of the Board. (4-11-19)

**007. -- 149. (RESERVED)**

**150. COMPLAINTS.**

All received complaints, related to allegations against health care providers regulated by the Board, shall be referred to the appropriate Medical Investigator (MI). (4-11-19)

**151. FORMAT FOR SUBMISSION OF COMPLAINT.**

Complaints shall be submitted in writing to the Board, and include, but not limited to, the name of the provider, the approximate date of the incident or care, the concerns regarding the incident or care, e-mail address, telephone number, and mailing address. (4-11-19)

**152. DETERMINATION OF AUTHORITY.**

After preliminary investigation, the MI shall determine if the complaint falls within the Board's statutory authority as defined in the appropriate practice act and rules. Questions related to jurisdiction shall be referred to the Executive Director and/or Board Counsel. (4-11-19)

**01. Outside Statutory Authority.** If the complaint falls outside of the Board's statutory authority, the MI shall notify the complainant in writing and may offer referral to an appropriate agency, if indicated. The Board shall maintain a copy of the complaint, response, and the preliminary investigation file for a period of one (1) year. Each complaint determined to be outside the Board's statutory authority shall be reviewed by the Committee on Professional Discipline at its next scheduled meeting. (4-11-19)

- 02. Within Statutory Authority.** If the complaint falls within the Board’s authority, the MI shall: (4-11-19)
- a.** Establish a complaint file; (4-11-19)
  - b.** Assign a case number; (4-11-19)
  - c.** Enter the complaint information into the Board’s database. (4-11-19)
  - d.** Correspond in writing to the complainant within ten (10) business days, when possible, and provide written information regarding the complaint process; (4-11-19)
  - e.** Correspond in writing to the provider within ten (10) business days, when possible, explaining the nature of the complaint and provide written information regarding the complaint process; (4-11-19)
  - f.** Monitor the case to insure the provider has replied and correspond in writing to the complainant and the provider advising of the case’s status at least every forty-five (45) to sixty (60) days. (4-11-19)
  - g.** The MI may request any additional information deemed necessary to fully investigate the complaint, including, but not limited to: (4-11-19)
    - i.** Interviewing the complainant and the respondent; (4-11-19)
    - ii.** Requesting additional records, documents, or statements; and (4-11-19)
    - iii.** Collecting collateral information. (4-11-19)

**153. COMPLAINT AUTHORITY.**

At the time the case is opened, the MI shall assign a priority rating\* (\*rating may change at any point in the investigation as new information is received) to the investigation according to the following table:

CATEGORY	DESCRIPTION
1	Imminent, or current danger to the public.
2	Threat to the public, currently monitored or controlled.
3	Identified as having practice, skills, or judgment concern considered a potential threat to the public.
4	Medium to low risk to public.
5	Low risk to public.

(4-11-19)

**01. Category One.** Cases assigned as Category one (1) shall be immediately reported to the Executive Director for appropriate action. (4-11-19)

**02. Category Two.** Cases assigned as Category two (2) is shall be reported to the Executive Director

for appropriate action. (4-11-19)

**154. REPORT OF INVESTIGATION.**

Upon receipt of the response and documentation obtained from the investigation, the MI shall prepare a report containing the following: (4-11-19)

- 01. Provider Information.** The name of the provider, address, specialty, and date of Board meeting. (4-11-19)
- 02. Previous Complaints.** A summary of previous complaints lodged against the provider. (4-11-19)
- 03. Complaint Concerns.** A copy and summary of the complainant's concerns. (4-11-19)
- 04. Provider's Response.** A copy and summary of the provider's response. (4-11-19)
- 05. MI Review.** A summary of the MI review of medical records/documentation. (4-11-19)
- 06. Other Relevant Documentation.** Additional relevant documentation may be attached as appropriate based on the nature of the complaint, response, and summary. (4-11-19)
- 07. Summary of Additional Information.** A copy and written summary of any additional interviews or information collected in the course of the investigation. (4-11-19)

**155. TRACKING.**

The Board, upon review and consideration of the recommendation made by the Committee on Professional Discipline (COPD) or respective Board or Committee, makes a determination upon the merits of the case and may take action to impose sanctions or limitations or conditions on licenses or permits issued: (4-11-19)

- 01. Case is Closed.** If the Board determines to close, the MI shall correspond in writing to the complainant and provider notifying each of the Board's final determination and action subject to federal and state law. (4-11-19)
- 02. Further Investigation is Requested.** If the Board determines further investigation is necessary to fully adjudicate the case, the MI shall obtain the requested information and prepare a summary as described in Section 020 of these rules. The complainant and provider shall be notified in writing of the Board determination and the case's status. (4-11-19)
- 03. Consultant is Requested.** If the Board determines a medical consultant is necessary to fully adjudicate the case, the MI shall engage an appropriate medical consultant to review the case and submit a written report of findings to the Board. Such medical consultant may be recently retired from or currently in a clinical practice similar to the named provider. The Board shall define the focus, scope and depth of the medical consultant's review. The medical consultant shall be: (4-11-19)
  - a.** Board certified; (4-11-19)
  - b.** Free from current Board review such as no open complaints or pending formal action; and (4-11-19)
  - c.** Free from conflicts and disqualification. Medical consultants shall disqualify themselves and, on motion of any interested party may, on proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias which interferes with their fair and impartial service. (4-11-19)
  - d.** The medical consultant must sign an independence statement before commencing the review. (4-11-19)
- 04. Stipulation and Order is Issued.** If the Board determines the case warrants issuance of a stipulation and order, a Board attorney shall generate the stipulation and order and submit to the named provider for

signature. The MI shall complete the stipulation checklist as indicated by the nature of the stipulation, identify the monitoring requirements and establish a monitoring plan for the provider. (4-11-19)

**05. Other Disciplinary Action Directed.** If the Board determines other disciplinary actions are warranted, the MI shall act under the guidance of the Executive Director and/or Board counsel. (4-11-19)

**06. Opportunity to Meet with Committee.** The named provider shall be provided an opportunity to meet with the COPD or Board staff prior to the initiation of formal disciplinary proceedings. (4-11-19)

**07. Recording of Board Action.** The MI shall update the database and the case file to reflect the Board's determination and action on the reviewed cases. (4-11-19)

**156. AUTHORITY TO CLOSE COMPLAINTS/CASES.**

The Board is solely authorized to close complaints and cases. All complaints and cases must be presented to the respective Board for consideration and recommendation to the Board. (4-11-19)

**157. OTHER INDICATORS FOR INVESTIGATION.**

**01. Board Investigations.** The Board may commence any investigation on its own initiative or on the basis on performance indicators. (4-11-19)

**02. Performance Indicators.** Performance indicators that may be used include, but are not limited to: (4-11-19)

- a. Frequent changes in geographical practice location. (4-11-19)
- b. Number of inactive licenses held. (4-11-19)
- c. Number of malpractice complaints. (4-11-19)
- d. Number of complaints lodged with the Board. (4-11-19)
- e. Failure to receive specialty board certification. (4-11-19)
- f. Changes in area/specialty of practice without formal retraining. (4-11-19)
- g. Health status. (4-11-19)
- h. Illness. Mental or physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill; or excessive use or abuse of drugs, including alcohol. (4-11-19)
- i. Prescribing practices. (4-11-19)
- j. Physicians without hospital privileges or medical practice affiliation who are not routinely subject to peer review. (4-11-19)
- k. Provider performance and outcome data received from sources such as Professional Review Organizations. (4-11-19)
- l. Disciplinary reports from managed care organizations. (4-11-19)
- m. Disciplinary reports by other state and government agencies. (4-11-19)
- n. Reports from outside sources of a pattern of unprofessional or disruptive behavior that could adversely affect patient care. (4-11-19)

**158. -- 200. (RESERVED)**



**201. DEFINITIONS PERTAINING TO TELEHEALTH SERVICES IN IDAHO.**

**01. Asynchronous Store and Forward Transfer.** “Asynchronous store and forward transfer” means the transmission of a patient’s health care information from an originating site to a provider at a distant site over a secure connection that complies with state and federal security and privacy laws. (4-11-19)

**02. Distant Site.** “Distant site” means the site at which a provider delivering telehealth services is located at the time the service is provided. (4-11-19)

**03. Originating Site.** “Originating site” means the location of a patient at the time telehealth services are provided. (4-11-19)

**04. Provider.** “Provider” means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho, pursuant to Title 54, Idaho Code, to deliver health care consistent with his or her license. (4-11-19)

**05. Synchronous Interaction.** “Synchronous interaction” means real-time communication through interactive technology that enables a provider and a patient at two (2) locations separated by distance to interact simultaneously through two-way video and audio or audio transmission. (4-11-19)

**06. Telehealth Services.** “Telehealth services” means health care services provided by a provider to a person through the use of electronic communications, information technology, asynchronous store and forward transfer or synchronous interaction between a provider at a distant site and a patient at an originating site. Such services include, but are not limited to, clinical care, health education, home health and facilitation of self-managed care and caregiver support. (4-11-19)

**202. IDAHO LICENSE REQUIRED.**

Any physician, physician assistant, respiratory therapist, polysomnographer, dietitian, or athletic trainer who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Medicine for their applicable practice. (4-11-19)

**203. PROVIDER-PATIENT RELATIONSHIP.**

In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a provider licensed by the Idaho State Board of Medicine who is providing telehealth services shall: (4-11-19)

**01. Verification.** Verify the location and identity of the patient; (4-11-19)

**02. Disclose.** Disclose to the patient the provider's identity, their current location and telephone number and Idaho license number; (4-11-19)

**03. Consent.** Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and (4-11-19)

**04. Provider Selection.** Allow the patient an opportunity to select their provider rather than being assigned a provider at random to the extent possible. (4-11-19)

**204. STANDARD OF CARE.**

A provider providing telehealth services to patients located in Idaho must comply with the applicable Idaho community standard of care. The provider shall be personally responsible to familiarize themselves with the applicable Idaho community standard of care. If a patient's presenting symptoms and conditions require a physical examination, lab work or imaging studies in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. (4-11-19)

**205. INFORMED CONSENT.**

In addition to the requirements of Section 54-5708, Idaho Code, evidence documenting appropriate patient informed

consent for the use of telehealth technologies must be obtained and maintained at regular intervals consistent with the community standard of care. Appropriate informed consent should, at a minimum, include the following terms:

(4-11-19)

- 01. Verification.** Identification of the patient, the provider and the provider's credentials; (4-11-19)
- 02. Telehealth Determination.** Agreement of the patient that the provider will determine whether or not the condition being diagnosed and/or treated is appropriate for telehealth services; (4-11-19)
- 03. Security Measures Information.** Information on the security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy and notwithstanding such measures; (4-11-19)
- 04. Potential Information Loss.** Disclosure that information may be lost due to technical failures. (4-11-19)

**206. MEDICAL RECORDS.**

As required by Section 54-5711, Idaho Code, any provider providing telehealth services as part of his or her practice shall generate and maintain medical records for each patient. The medical record should include copies of all patient-related electronic communications, including patient-physician communications, prescriptions, laboratory and test results, evaluations and consultations, relevant information of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with the provision of telehealth services should also be documented in the medical record. The patient record established during the provision of telehealth services must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. (4-11-19)

**207. -- 999. (RESERVED)**