

Dear Senators LAKEY, Ricks, Burgoyne, and  
Representatives HOLTZCLAW, Syme, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Division of Veterans Services:

IDAPA 21.01.01 - Rules Governing Admission, Residency, and Maintenance Charges in Idaho State  
Veterans Homes and Division of Veterans Services Administrative Procedure - Proposed  
Rule (Docket No. 21-0101-2201).

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 11/21/2022. 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 12/19/2022.

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.



**Terri Kondoff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** November 03, 2022

**SUBJECT:** Division of Veterans Services

IDAPA 21.01.01 - Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure - Proposed Rule (Docket No. 21-0101-2201)

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

The Division of Veterans Services submits notice of proposed rule at IDAPA 21.01.01 - Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure. According to the division, the purpose of the rule is to remove a contradiction in the existing rule that conflicts with Chapter 5, Title 14, Idaho Code, regarding unclaimed property. The division states that the rule also clarifies the rights of a resident regarding a notice of transfer or discharge and the rights of an applicant regarding notice of a denial of an application for residency.

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

Negotiated rulemaking was not conducted. The division reiterates that the rule changes bring the rule in alignment with the statute. There is no fiscal impact anticipated as a result of the rulemaking.

#### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 65-202, 65-204, and 66-907, Idaho Code.

cc: Division of Veterans Services  
Kevin Wallior

#### **\*\*\* 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.

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

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## IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

### 21.01.01 – RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE

DOCKET NO. 21-0101-2201

#### 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 65-202; 65-204; and 66-907, 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 November 16, 2022.

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 rule change removes a contradiction in the existing rule that conflicts with Title 14 Chapter 5, Idaho Code, the Unclaimed Property Act (UCPA). It also clarifies the rights of a resident regarding a notice of transfer or discharge and the rights of an applicant regarding notice of a denial of an application for residency.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this brings the Division's existing rule in alignment with existing Idaho Statute.

**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 Kevin Wallior at 208-780-1308.

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 November 23, 2022.

DATED this November 2, 2022.

Kevin Wallior, Management Assistant  
Idaho Division of Veterans Services  
351 Collins Road  
Boise, ID 83702  
Phone: 208-780-1308  
Fax: 208-780-1301  
Email: [kevin.wallior@veterans.idaho.gov](mailto:kevin.wallior@veterans.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 21-0101-2201  
(Only Those Sections With Amendments Are Shown.)

200. ~~CONDITIONS FOR DENIAL OF~~ **DENIAL OF** ADMISSION.

~~01- Denial of Admission.~~ Admission may be denied to an otherwise eligible applicant for any reason for which an admitted resident could be involuntarily discharged. (3-23-22)( )

~~02- Assignment of Personal Property. Prior to admission to a Home, an eligible applicant must agree that while he is a resident of a Home he will assign the following, under the conditions specified:~~ (3-23-22)

~~a- Pursuant to Section 66-906, Idaho Code, all personal property owned, money held, or assets to which he is entitled at the time of his death—unless disposed of by will or rightfully claimed within five (5) years of the death of the resident by an heir or person named in the resident's will—must be assigned to the Division Administrator at the time of application for the sole use and benefit of a Home.~~ (3-23-22)

~~b- Upon discharge or voluntary departure from a Home, and after written notification is sent to the resident, all personal property owned or money deposited with the Home which is unclaimed by the former resident will be converted for the sole use and benefit of a Home as specified below:~~ (3-23-22)

~~i- Personal property unclaimed within thirty (30) days of departure or discharge will be made available to needy Home residents or disposed of at public auction or private sale and the proceeds deposited with the state; or~~ (3-23-22)

~~ii- Money deposited with the Home will be retained and deposited with the state; however, said money may be claimed by the former resident within five (5) years of departure or discharge.~~ (3-23-22)

(BREAK IN CONTINUITY OF SECTIONS)

980. **NOTICE OF RESIDENT TRANSFER OR DISCHARGE AND NOTICE OF DENIAL OF AN APPLICATION FOR RESIDENCY.**

The Home Administrator or his designee must notify the applicant or resident of any action to be taken regarding rejection of an application or involuntary transfer or discharge from a Home. The Home does not need to provide notice of voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. (3-23-22)( )

**01. Form of Notice.** (3-23-22)

~~a- The notices~~ of denial of application ~~may be made orally.~~ (3-23-22)

~~b- The notice of or ineligibility for residency; transfer; or discharge~~ must be in writing. (3-23-22)( )

**02. Content of Notice of Transfer or Discharge.** The notice must state the following: (3-23-22)

**a.** The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; (3-23-22)

**b.** The effective date of the action; (3-23-22)

**c.** The location to which the resident is transferred or discharge, which is established for Nursing Care transfers and discharges only; (3-23-22)

**d.** The applicant's or resident's right to request a hearing according to the ~~provisions~~ deadlines in

Section 982 of these rules; and (3-23-22)( )

- e. The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. (3-23-22)
- f. The name, address, and telephone number of the State long term care ombudsman; (3-23-22)
- g. The name, address, and telephone number of the State Disability Rights agency responsible for the protection and advocacy for those residents with developmental disabilities or mental illness. (3-23-22)

**03. Notification Deadlines ~~for Domiciliary Care~~. The Notice shall be provided to the applicant or resident according to ~~the following notification~~ deadlines ~~are established for Domiciliary Care only~~:**

(3-23-22)( )

**a. Denial of application or findings of ineligibility.** Notice of a denial of application or findings of ineligibility for residency must be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ( )

**~~a~~b. Domiciliary Care. Discharge ~~or transfer~~ notices ~~to residents receiving Domiciliary Care~~ must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01, 350.03 and 350.04 of these rules. (3-23-22)( )**

~~b. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-23-22)~~

**~~04. Notification Deadlines for Residential Care.~~ The following notification deadlines are established for Residential Care only:** (3-23-22)

**~~a~~c. Residential Care. Discharge ~~or transfer~~ notices ~~to residents receiving Residential Care~~ must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01, 350.03 and 350.04 of these rules. (3-23-22)( )**

~~b. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-23-22)~~

**~~05. Notification Deadlines for Nursing Care.~~ The following notification deadlines are established for Nursing Care only:** (3-23-22)

**~~d.~~ Nursing Care. Residents receiving Nursing Care must receive notice as follows: ( )**

**~~d~~i. Notices of general discharge or transfer pursuant to Subsection 350.02 of these rules must be sent to the resident thirty (30) days prior to the intended effective date of the action. (3-23-22)**

**~~b~~ii. Notices of emergency discharge or transfer pursuant to Subsection 350.01 of these rules must be sent to the resident as soon as practical. (3-23-22)**

**~~e~~iii. Notices of discharge or transfer during absence pursuant to Subsection 350.03 of these rules must be sent to the resident within three (3) working days of the Home's determination to transfer ~~or discharge~~. (3-23-22)( )**

**~~d~~iv. Notice of discharge ~~or transfer~~ for unauthorized absences pursuant to Paragraph 350.02.g. of these rules must be sent to the resident within three (3) days of the last unauthorized absence establishing a basis for discharge. (3-23-22)( )**

~~e. The Home does not need to provide notice of voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. (3-23-22)~~

~~f. Notification of the denial of an application for residency will be mailed to the applicant within~~

~~three (3) working days after receipt of the completed application citing the reasons for rejection.~~ (3-23-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**982. PROVISIONS FOR CONTESTED CASES.**

**01. Inapplicability of Idaho Rules of Administrative Procedure of the Attorney General.** All contested cases shall be governed by the provisions of these rules. The Commission and Division Administrator find that the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable and inappropriate for contested cases before the Commission, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (3-23-22)

**02. Hearing Rights.** Residents and applicants have the following rights to a hearing: (3-23-22)

**a.** If a resident of a Home is notified of transfer or discharge, the resident will be afforded an opportunity for a hearing. A resident of a Home must attempt to resolve the bases stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing. A resident will not be afforded an opportunity for a hearing based upon a voluntary transfer or discharge under Subsection 350.04 of these rules. (3-23-22)

**b.** If an application for residency in a Home is rejected, the applicant may request a hearing. (3-23-22)

**03. Requesting a Hearing for Nursing Care.** A request for a hearing from a nursing care resident for residency in a Home must be submitted to the Idaho Department of Health and Welfare, *Fair Hearing Office*, P.O. Box 83720, Boise, Idaho 83720-0036. Requests for appeal should be received by the Idaho Department of Health and Welfare before thirty (30) days have passed in order to stop the discharge or transfer before it occurs. ~~(3-23-22)~~ ( )

**04. Requesting a Hearing for Residential and Domiciliary Care.** (3-23-22)

**a.** A request for a hearing from a resident for residential and domiciliary care residency in a Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or the scheduling of a hearing. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Paragraph 982.02.a. of these rules. (3-23-22)

**b.** A request for a hearing must be in writing and signed by the applicant/resident. (3-23-22)

**c.** A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-23-22)

**d.** Pending a hearing, benefits will be continued or held in abeyance as follows: (3-23-22)

**i.** Benefits for domiciliary care, residential care, and nursing care residents will not be continued when the transfer or discharge is an emergency discharge under Subsection 350.01 of these rules or a discharge for unauthorized absences under Paragraph 350.02.g. of these rules. If the hearing request is made before the effective date of action and within three (3) days of receipt of the notice, no action will be taken by the Home Administrator on a general discharge under Subsection 350.02 of these rules, except Paragraph 350.02.g., or a transfer under Subsection 350.03 of these rules pending receipt of the final order. (3-23-22)

**e.** The Division Administrator will not accept a request for a hearing from a voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. (3-23-22)