

Dear Senators VANORDEN, Wintrow, and
Representatives VANDER WOUDE, Erickson, Rubel:

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

IDAPA 16.05.01 - Use and Disclosure of Department Records - Temporary and Proposed Rule
(Docket No. 16-0501-2401);

IDAPA 16.06.02 - Foster Care Licensing - Temporary and Proposed Rule (Docket No.
16-0602-2403).

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 12/03/2024. 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 12/31/2024.

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 Kondeff
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: Legislative Drafter - Kyle Slominski

DATE: November 14, 2024

SUBJECT: Department of Health and Welfare

IDAPA 16.05.01 - Use and Disclosure of Department Records - Temporary and Proposed Rule (Docket No. 16-0501-2401)

IDAPA 16.06.02 - Foster Care Licensing - Temporary and Proposed Rule (Docket No. 16-0602-2403)

Summary and Stated Reasons for the Rule

Docket No. 16-0501-2401: The Department submits notice of a temporary and proposed rule at IDAPA 16.05.01. This docket adds language indicating that the Department's policy is to provide information to the maximum extent possible to protect children from abuse and neglect and to facilitate child and family services. The docket also removes language the Department identified as unnecessary. The Department states that this change is necessary to detail the Department's position of being as transparent as possible in providing information to protect children.

Docket No. 16-0602-2403: The Department submits notice of a temporary and proposed rule at IDAPA 16.06.02. This temporary and proposed rule allows for a fast-tracked reactivation of a foster care license under certain conditions. The Department states that rule is designed to increase the number of resource families in the foster care system throughout the state.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted for either docket, with the Department indicating that an immediate change was needed. Neither docket is anticipated to have a negative fiscal impact on the General Fund.

Statutory Authority

Docket No. 16-0501-2401: The temporary and proposed rule appears to be authorized pursuant to Sections 56-202, 56-221, 56-1003, and 56-1004, Idaho Code.

Docket No. 16-0602-2403: The temporary and proposed rule appears to be authorized pursuant to Sections 39-1211, 39-1213, 56-1004A, and 56-1005, Idaho Code.

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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cc: Department of Health and Welfare
Adam Jones

***** 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 16 – DEPARTMENT OF HEALTH AND WELFARE

16.05.01 – USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-2401

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 6th, 2024.

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 Section 56-202, Idaho Code, as well as Sections 39-242, 56-221, 56-222, 56-1003, and 56-1004, 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 September 18th, 2024.

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:

This rule adds language detailing that the Department will provide information to the maximum extent possible to protect children from abuse. This rule change also deletes unnecessary regulatory burden.

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

The health and safety of the children of the State of Idaho is central to the mission of the Department of Health and Welfare. This temporary rule is necessary to detail the Department's position of being as transparent as possible in providing information to protect Idaho's children from abuse and neglect and to facilitate child and family services.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Fees are not increased as a result of this rulemaking.

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 will not be a negative fiscal impact exceeding \$10,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the immediate need to institute additional protections for Idaho's youth.

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 temporary and proposed rule, contact Jared Larsen at 208-334-5500.

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 September 25th, 2024.

DATED this 6th day of August, 2024.

Alex J. Adams, PharmD, MPH
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0501-2401
(Only Those Sections With Amendments Are Shown.)**

16.05.01 – USE AND DISCLOSURE OF DEPARTMENT RECORDS

000. LEGAL AUTHORITY.

~~The Idaho Department of Health and Welfare and the Board of Health and Welfare have authority to promulgate rules governing the use and disclosure of Department records, according to Sections 39-242, 56-221, 56-222, 56-1003, and 56-1004, Idaho Code.~~ (3-17-22)(8-6-24)T

001. ~~TITLE AND SCOPE.~~

01. ~~Title.~~ ~~These rules are titled IDAPA 16.05.01, “Use and Disclosure of Department Records.”~~ (3-17-22)

02. ~~Scope.~~ ~~These rules govern the use and disclosure of information maintained by the Department, in compliance with applicable state and federal laws, and federal regulations.~~ (3-17-22)(8-6-24)T

a. ~~These rules apply to all Department employees, contractors, providers of services, and other individuals or entities who request or use that information.~~ (3-17-22)

b. ~~These rules apply to all use and disclosure information, regardless of the form in which it is retained or disclosed.~~ (3-17-22)

e. ~~All individuals and entities must comply with any standards in state or federal law or regulation that contain additional requirements, or are more restrictive than the requirements of these rules.~~ (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

210. CHILD PROTECTION.

~~Unless allowed by these rules or other provision of law,~~ It shall be the policy of the Idaho Department of Health and Welfare to provide information to the maximum extent possible to carry out the department’s responsibility under law to protect children from abuse and neglect and to facilitate child and family services. ~~†The Department, upon request will disclose information from child protection records in its possession upon a court order obtained in compliance with Subsection 075.02 of these rules pursuant to Section 74-105(7), Idaho Code.~~ Disclosure of Department records

under the Child Protective Act is governed by Section 16-1629(6), Idaho Code, [and Idaho Court Administrative Rule 32](#). Court records of Child Protective Act proceedings are governed by Section 16-1626, Idaho Code. Pertinent federal laws and regulations include 42 USC 5106a. ~~Information regarding child fatalities or near fatalities may be made public.~~ ~~(3-17-22)~~ [\(8-6-24\)T](#)

01. Child Fatalities. In accordance with 42 USC 5106a(b)(2)(B)(x), the Department will disclose non-identifying summary information to the Statewide Child Fatality Review Team, established by the Governor’s Task Force on Children at Risk, regarding child fatalities that were determined to be the result of abuse, neglect, or abandonment. (3-17-22)

02. Public Disclosure. The Department has the discretion to disclose child-specific information under this rule when the disclosure is not in conflict with the child’s best interests and one (1) or more of the following applies: (3-17-22)

- a.** Identifying information related to child-specific abuse, neglect, or abandonment has been previously published or broadcast through the media; (3-17-22)
- b.** All or part of the child-specific information has been publicly disclosed in a judicial proceeding; or (3-17-22)
- c.** The disclosure of information clarifies actions taken by the Department on a specific case. (3-17-22)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.06.02 – FOSTER CARE LICENSING

DOCKET NO. 16-0602-2403

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 15th, 2024.

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 regular rulemaking procedures have been initiated. This rule chapter is promulgated pursuant to Sections 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), 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 September 18th, 2024.

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:

This rule change allows individuals who have been a licensed foster parent in the last 12 months, but has let their license lapse, renew their foster license with a fast-tracked process so long as they were in good standing while licensed.

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

There has been a demonstrated need to increase the number of resource families in the foster system throughout the state. Achieving a higher ratio of eligible foster families to foster kids in need has become the top priority of the Department. This change is needed to help support that mission, and in doing so also reduces the regulatory burden imposed by the state.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Fees will not be increased as a result of this rulemaking.

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 will not be a negative fiscal impact exceeding \$10,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the shortage of foster homes is at a level in which urgent action is needed.

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 temporary and proposed rule, contact Jared Larsen, 208-334-5500.

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 September 25th, 2024.

DATED this 15th day of August, 2024.

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0602-2403
(Only Those Sections With Amendments Are Shown.)**

16.06.02 – FOSTER CARE LICENSING

102. DISPOSITION OF APPLICATIONS.

The Department will expeditiously initiate action on each completed application within one (1) business day after receipt that addresses each requirement for the specific type of home. (7-1-24)T

01. Approval of Application. The Department will issue a license to any foster home complying with these rules. (7-1-24)T

02. Regular License. The Department will issue a regular license to any foster home complying with these rules and will specify the terms of licensure, such as: (7-1-24)T

a. The number of children who may receive care at any one (1) time; and (7-1-24)T

b. Age range and sex if there are conditions in the foster home making such limitations necessary; (7-1-24)T

c. The regular license for a foster home is in effect for one (1) year from the date of issuance unless suspended or revoked earlier; (7-1-24)T

d. If the license for a foster home is for a specific child, the name of that child will be shown on the foster home license. (7-1-24)T

03. Waiver or Variance. A regular license may be issued to the foster home who has received a waiver or variance of licensing rules provided: (7-1-24)T

a. The approval is considered on an individual case basis; (7-1-24)T

b. The approval will, in the judgment of the Department, maintain the safety of the child(ren); (7-1-24)T

c. All other licensing requirements have been met; (7-1-24)T

d. The Department will document a description of the reasons for issuing a waiver or variance, the rules involved, and assurance that the waiver or variance will not compromise the child's safety; and (7-1-24)T

- e. The approved waiver or variance must be reviewed for continued need and approved annually. (7-1-24)T
- 04. Limited License.** May be issued for the care of a specific child in a home which may not meet the requirements for a license, provided: (7-1-24)T
- a. The child is already in the home and has formed strong emotional ties with the foster parents; and (7-1-24)T
- b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than removal to another home. (7-1-24)T
- 05. Denial of Application.** If an application is denied, a signed letter will be sent directly to the applicant by registered or certified mail, advising the applicant of the denial and stating the basis for such denial. An applicant whose application has been denied may not reapply until one (1) year after the date on the denial of application. (7-1-24)T
- 06. Failure to Complete Application Process.** Failure to complete the application process within six (6) months from the original date of application will result in vacation of the application. (7-1-24)T
- 07. Facilitating Applications.** (7-1-24)T
- a. The Department may, within its appropriation, cover reasonable expenses to ensure homes meet the requirements of these rules including the home health and safety requirements and sleeping arrangements. (7-1-24)T
- b. The Department will establish procedures to fast-track applications from candidates who have a successful track record of serving as a foster home in other states. (7-1-24)T
- 08. Reactivating an Idaho License.** If less than twelve (12) months has elapsed from the last licensed foster home visit required by Section 39-1217, Idaho Code, the Department may fast-track reactivating the license if the prior licensee: (8-15-24)T
- a. Relinquished the license in good standing; and (8-15-24)T
- b. Attests to maintaining conformity with the standards established by the Department. (8-15-24)T