

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 16.07.33 - Adult Mental Health Services - Proposed Rule (Docket No. 16-0733-2401).

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 12/06/2024. 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 01/03/2025.

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 19, 2024
SUBJECT: Department of Health and Welfare

IDAPA 16.07.33 - Adult Mental Health Services - Proposed Rule (Docket No. 16-0733-2401)

Summary and Stated Reasons for the Rule

The Department of Health and Welfare submits notice of rulemaking at IDAPA 16.07.33. The Department states that the proposed rulemaking is intended to prevent the accumulation of ineffective and outdated regulations and to reduce regulatory burden. The proposed rule removes sections of existing rule language regarding Adult Mental Health Services and makes no substantial additions. The Department also notes that the proposed rule coincides with recent go-live status of the Idaho Behavioral Health Plan and that no fees are being increased as a result of the proposed rulemaking.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted. The Department notes that it will collect public comments at the public hearing concerning the rulemaking. The Department anticipates no negative fiscal impact.

Statutory Authority

The rulemaking appears to be authorized pursuant to sections 39-3140, 56-202, 56-1004, 56-1004A, and 56-1007, Idaho Code.

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.

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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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.33 – ADULT MENTAL HEALTH SERVICES

DOCKET NO. 16-0733-2401

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 56-202, Idaho Code, and 39-3140, 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

VIRTUAL TELECONFERENCE Via WebEx
Wednesday, November 13, 2024 2:30 p.m. (MST)
Join from the meeting link: https://idhw.webex.com/idhw/j.php?MTID=m268521f0e14217752d8ecbfda943e4d2
Join by meeting number: Meeting number (access code): 2830 965 8425 Meeting password: mFjKUBQM528 (when dialing from a phone or video system) 63558276
Join by phone: +1-415-527-5035,,28309658425#63558276# United States Toll +1-303-498-7536,,28309658425#63558276# United States Toll (Denver)

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:

The rule change strives to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. This also coincides with the recent go-live status of the Idaho Behavioral Health Plan and seeks to update this rule chapter in association with similarly effected chapters including 16.07.17 and 16.07.37.

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

Fees are not being increased as a result of this proposed 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 as a result of this rulemaking:

There will not be a negative fiscal impact exceeding \$10,000 as a result of this proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted on this rule chapter however public comments will be collected at the public hearing scheduled above.

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 Jared Larsen at 208-334-5500.

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 27th, 2024.

DATED this 11th day of October, 2024.

Alex J. Adams, PharmD, MPH
Director
Idaho Department of Health & Welfare
450 W. State Street, 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
Alex.Adams@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0733-2401
(Only Those Sections With Amendments Are Shown.)

16.07.33 – ADULT MENTAL HEALTH SERVICES

001 – ~~002~~3. (RESERVED)

~~003. ADMINISTRATIVE APPEALS.~~

~~Administrative appeals from a denial of eligibility under Section 102 of these rules are governed by IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” (4-6-23)~~

(BREAK IN CONTINUITY OF SECTIONS)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

~~**01. Background Checks.** All employees, interns, contractors, and volunteers of adult mental health services must comply with IDAPA 16.05.06, “Criminal History and Background Checks,” Section 101. (4-6-23)~~

~~**02. Availability to Work or Provide Service.** An individual under Subsection 009.01 of this rule is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted their background check application, it has been reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual is fingerprinted within twenty one (21) days of submitting their background check. (4-6-23)~~

~~**a.** An individual is allowed to work or have access to participants only under supervision until the~~

~~background check is completed.~~ (4-6-23)

~~b. An individual, who does not receive a background check clearance or have a Behavioral Health waiver granted under these rules, may not provide direct care or services, or serve in a position that requires regular contact with participants.~~ (4-6-23)

031. Waiver of Background Check Denial. (4-6-23)

a. A certified individual who is seeking to provide Peer Support Specialist, Family Support Partner, or Recovery Coach services that receives an unconditional denial or a denial after an exemption review by the Department's Criminal History Unit, may apply for a Behavioral Health waiver. (4-6-23)

b. An individual is allowed to work with or have access to participants only under supervision until the waiver request is processed. (4-6-23)

010. DEFINITIONS

01. Adult. An individual eighteen (18) years or older. (4-6-23)

02. Adult Mental Health Services (AMHS). Are listed in Section 301 of these rules. These services are provided in response to the mental health needs of adults eligible for services required in Title 39, Chapter 31, Idaho Code, the Regional Behavioral Health Service Act, and under Section 102 of these rules. (4-6-23)

03. Applicant. An adult individual who is seeking mental health services through the Department who has completed, or had completed on their behalf, an application for mental health services. (4-6-23)

~~04. Clinical Assessment. The gathering of historical and current clinical information through a clinical interview and from other available resources to identify a participant's mental health issues, strengths, and service needs.~~ (4-6-23)

~~05. Clinical Team. A proposed participant's clinical team may include: clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians, and any other individual deemed appropriate and necessary to ensure that the treatment is comprehensive and meets the needs of the proposed participant.~~ (4-6-23)

~~06. Crisis Intervention Services. A set of planned activities designed to reduce the risk of life-threatening harm to self or another person. Crisis intervention services include evaluation, assessment, intervention, stabilization, and follow up planning.~~ (4-6-23)

074. Department. The Idaho Department of Health and Welfare or its designee. (4-6-23)

085. Eligibility Screening. The collection and review of information directly related to the applicant's mental health and level of functioning, which the Department uses to determine whether an applicant is eligible for adult mental health services available through the Department's Division of Behavioral Health. (4-6-23)

~~09. Mental Health Crisis. Occurs when a sudden loss of an adult individual's ability to use effective problem solving and coping skills leads to an imminent risk of harm to self or others, or decompensation to the point of the individual's inability to protect themselves.~~ (4-6-23)

~~10. Network Treatment Provider. Any provider, group of providers, or entity that has a network provider agreement with the Department's Division of Behavioral Health contractor to provide behavioral health services.~~ (4-6-23)

~~106. Participant.~~ A person receiving mental health services through the Department. (4-6-23)

~~107. Serious Mental Illness (SMI).~~ Any of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, (DSM-5-TR),

incorporated in these rules: (4-6-23)

- a. Schizophrenia spectrum and other psychotic disorders; (4-6-23)
- b. Bipolar disorders (mixed, manic, and depressive); (4-6-23)
- c. Major depressive disorders (single episode or recurrent); (4-6-23)
- d. Obsessive-compulsive disorders. (4-6-23)

1308. Serious and Persistent Mental Illness (SPMI). A primary diagnosis under DSM-5-TR of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Psychotic Disorder Not Otherwise Specified (NOS) for a maximum of one hundred twenty (120) days without a conclusive diagnosis. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following functional areas in the last six (6) months: (4-6-23)

- a. Vocational or educational, or both. (4-6-23)
- b. Financial. (4-6-23)
- c. Social relationships or support, or both. (4-6-23)
- d. Family. (4-6-23)
- e. Basic daily living skills. (4-6-23)
- f. Housing. (4-6-23)
- g. Community or legal, or both. (4-6-23)
- h. Health or medical, or both. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

101. ELIGIBILITY SCREENING AND MENTAL HEALTH ASSESSMENT.

~~01. Eligibility Screening.~~ The eligibility screening must be directly related to the participant's mental illness and level of functioning and is based on the eligibility criteria under Section 102 of these rules. (4-6-23)

~~02. Clinical Assessment.~~ Once an individual is found eligible for AMHS the individual will be authorized to receive a clinical assessment from a treatment provider in the Division of Behavioral Health's AMHS network to determine level of care. (4-6-23)

102. ELIGIBILITY DETERMINATION.

01. Determination of Eligibility for Mental Health Services. The Department may limit or prioritize mental health services, define eligibility criteria, or establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (4-6-23)

- 02. Eligibility Requirements.** To be eligible for voluntary mental health services, the individual must: (4-6-23)
 - a. Be an adult; (4-6-23)

- b. Be a resident of the state of Idaho; and (4-6-23)
- c. Have a primary diagnosis of SMI or SPMI. (4-6-23)

~~**03. Court Ordered Assessment, Treatment, and Services.** The court may order the Department to provide assessment, treatment, and services according to Sections 18-212, 19-2524, and 66-329, Idaho Code. (4-6-23)~~

~~**04. Ineligible Conditions.** An individual who has a neurological disorder, a neurocognitive disorder as defined in Section 66-317, Idaho Code, a developmental disability as defined in Section 66-402, Idaho Code, a physical disability, or any medical disorder that includes psychiatric symptomology or is primarily impaired by substance use, unless in addition to such condition, such person is mentally ill. (4-6-23)~~

~~**103. NOTICE OF CHANGES IN ELIGIBILITY FOR MENTAL HEALTH SERVICES.** The Department may, upon ten (10) days' written notice, reduce, limit, suspend, or terminate eligibility for mental health services. (4-6-23)~~

~~**104. CRISIS INTERVENTION SERVICES.** Crisis intervention services are available twenty four (24) hours per day, seven (7) days per week to adults experiencing a mental health crisis as defined under Section 010 of these rules. Crisis intervention services include evaluation, assessment, intervention, stabilization, and follow-up planning. (4-6-23)~~

~~**01. Determination of the Need for Crisis Intervention Services.** The Department or its contractors will assess an adult experiencing a mental health crisis to determine whether services are needed to alleviate the crisis. (4-6-23)~~

~~**02. Identification of the Crisis Intervention Services Needed.** If crisis intervention services are clinically necessary, as determined by the Department or its contractors, the Department or its contractors will: (4-6-23)~~

- a. Identify the services needed to stabilize the crisis; (4-6-23)
- b. Arrange for the provision of the crisis intervention services; and (4-6-23)
- c. Document in the individual's record the crisis services that are to be provided to the individual. (4-6-23)

~~**03. Immediate Intervention.** If the Department determines that a mental health crisis exists necessitating immediate intervention, crisis services will be arranged immediately. (4-6-23)~~

~~**105. NOTICE OF DECISION ON ELIGIBILITY AND RIGHT TO APPEAL.**~~

~~**01. Notification of Eligibility Determination.** Within two (2) business days of receiving a completed screening, the Department or its contractors will notify the applicant or the applicant's designated representative in writing of its eligibility determination. (4-6-23)~~

~~**02. Notice of Right to Appeal.** When the applicant is not eligible for services through the Department or its contractor(s), the Department or its contractor(s) will notify the applicant or the applicant's designated representative. The written notice will include: (4-6-23)~~

- a. A statement of the decision and the concise reasons for it; (4-6-23)
- b. The process and timeline for pursuing an appeal of the decision under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings"; and (4-6-23)
- c. The right to be represented on appeal. (4-6-23)

~~106. -- 119.~~ (RESERVED)

~~120. PARTICIPANT'S RIGHTS AND RESPONSIBILITIES.~~

~~The Department will inform each participant receiving AMHS through the Department of their rights and responsibilities prior to the delivery of mental health services. Each participant is given a written statement of participant rights and responsibilities, which includes who the participant may contact with questions, concerns, or complaints regarding services provided.~~ (4-6-23)

~~121~~⁰³. -- 999. (RESERVED)