

Dear Senators MARTIN, Riggs, Stennett, and  
Representatives WOOD, Vander Woude, Chew:

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

IDAPA 16.06.12 - Idaho Child Care Program (ICCP) - Proposed Rule (Docket No. 16-0612-2201).

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 11/25/2022. 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 12/23/2022.

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 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:** Principal Legislative Drafting Attorney - Elizabeth Bowen

**DATE:** November 08, 2022

**SUBJECT:** Department of Health and Welfare

IDAPA 16.06.12 - Idaho Child Care Program (ICCP) - Proposed Rule (Docket No. 16-0612-2201)

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

This proposed rule regarding the Idaho Child Care Program expands eligibility for the program by raising the income eligibility ceiling to 175% of the federal poverty guideline. The proposed rule also clarifies that child care providers must certify that they will not harm, shake, or abuse children and makes minor revisions to the language of the existing rule. These changes are being made following a federal audit to bring the program into compliance with federal regulations.

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

Negotiated rulemaking was not conducted due to the nature of the rule change, which is to comply with federal regulations. There is no anticipated negative impact on the state general fund.

#### **Statutory Authority**

This rulemaking appears to be authorized pursuant to Section 56-202, Idaho Code.

cc: Department of Health and Welfare  
Frank Powell and Trinette Middlebrook

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

**16.06.12 – IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-2201**

**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 Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

<b>Virtual Public Hearing via WebEx</b>
<b>Thursday, October 13, 2022 10:00 a.m. to 11:30 a.m. (MT)</b>
<b>Join from the meeting link</b> <a href="https://idhw.webex.com/idhw/j.php?MTID=ma1d5ab02decab7bf8fd2e930f137a004">https://idhw.webex.com/idhw/j.php?MTID=ma1d5ab02decab7bf8fd2e930f137a004</a> <b>Webinar Number: 2763 142 1076</b> <b>Webinar Password: 5JZjZxS5zU3 (55959975 from phones)</b> <b>Join by Phone:</b> <b>+1-415-527-5035 United States Toll</b> <b>+1-303-498-7536 United States Toll (Denver)</b> <b>Access code: 276 314 21076</b>

<b>Virtual Public Hearing via WebEx</b>
<b>Tuesday, October 18, 2022 10:00 a.m. to 11:30 a.m. (MT)</b>
<b>Join from the meeting link</b> <a href="https://idhw.webex.com/idhw/j.php?MTID=mad392c5aaf1682ae9a2a29067204a106">https://idhw.webex.com/idhw/j.php?MTID=mad392c5aaf1682ae9a2a29067204a106</a> <b>Webinar Number: 2761 590 1253</b> <b>Webinar Password: A6Ts44v5wJC (26874485 from phones)</b> <b>Join by Phone:</b> <b>+1-415-527-5035 United States Toll</b> <b>+1-303-498-7536 United States Toll (Denver)</b> <b>Access code: 276 159 01253</b>

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:

During a federal audit of the Idaho Child Care Program it was determined that Idaho is out of compliance with the following:

1. *Federal law, 45 CFR 98.21(a)(1), related to subsidy eligibility and the proposed changes will bring us into compliance. (Child Care and Development Fund (CCDF) Plan for Idaho FFY 2022-2024 Section 3.4.1)*
2. *Federal law, 45 CFR 98.41(a)(1)(vi), related to prevention of Shaken Baby Syndrome, Head Trauma, and Child Maltreatment for children accessing child care, and the proposed changes will bring us into compliance. (Child Care and Development Fund (CCDF) Plan for Idaho FFY 2022-2024 Section 5.3.6)*

This proposed rule is due to the need for more assistance to Idaho families who are struggling to pay for child care costs. Forty-five percent (45%) of Idaho families struggle to meet their basic budget needs, and having help with child care costs allows for more resources to assist with other aspects of family budgeting, as child care costs are often the highest cost for most counties in Idaho, even more so than housing.

The proposed rule increases the federal poverty limit for child care assistance, therefore allowing more Idaho families access to a benefit that would help them cover a portion of their child care bill.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees associated with this chapter of rule.

**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:

The funds being used to implement the proposed changes are federal Child Care and Development Block Grant (CCDBG) funds and such funds are sufficient to meet all proposed costs for the foreseeable future. The funds being used to implement the proposed changes in our automated systems are federal Child Care and Development Block Grant (CCDBG) funds and such funds are sufficient to meet all proposed costs for the foreseeable future.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to align with federal requirements, promote the public health and safety of Idahoans, and confer a benefit to stakeholders.

**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: There are no changes that include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ericka Rupp at 208-334-5641.

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 26, 2022.

DATED this 29th day of August, 2022.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5500  
fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0612-2201  
(Only Those Sections With Amendments Are Shown.)

**070. INCOME LIMITS.**

To be eligible for child care assistance, a family's countable income must meet the following ~~guidelines~~ using the published Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. (3-17-22)(    )

**01. Income at Application.** ~~At the time of application~~ **When applying**, a family's income cannot exceed one hundred ~~thirty~~ **seventy-five** percent (~~130~~**75**%) of ~~the Federal Poverty Guidelines (FPG)~~ for a family of the same size. (3-17-22)(    )

**02. Income During Eligibility Period.** During the eligibility period, when a family's countable income exceeds eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, the family becomes ineligible for child care assistance. (3-17-22)

**03. Income at ~~Time of~~ Redetermination.** At ~~the time of~~ redetermination, if a family's income exceeds one hundred ~~thirty~~ **seventy-five** percent (~~130~~**75**%) of ~~the Federal Poverty Guidelines (FPG)~~ for a family of the same size, the family may be eligible to receive a graduated phase out of child care assistance. (3-17-22)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.**

A natural or adoptive parent, or other individual who lives with and exercises parental control over a minor child who has an absent parent, must cooperate in establishing paternity for the child and obtaining child support **at application and redetermination**. (3-17-22)(    )

**01. Providing All Information.** "Cooperation" includes providing all information to identify and locate the non-custodial parent, unless good cause for non-cooperation exists. (3-17-22)

**02. Established Case for Custodial Parent.** After Child Support Services (~~CSS~~) has established a case for a custodial parent, all child support payments must be sent directly to CSS. If the custodial parent receives child support directly from the non-custodial parent, the custodial parent must forward the payment to CSS for receipting. (3-17-22)(    )

**03. Failure to Cooperate.** (3-17-22)

**a.** ~~Failure to cooperate includes~~ **This includes** failure to complete the non-custodial or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by ~~Child Support Services (CSS)~~. (3-17-22)(    )

**b.** When a parent or individual fails to cooperate ~~in establishing paternity and obtaining support~~, the

family is not eligible to participate in the Idaho Child Care Program.

(3-17-22)( )

**04. Exemptions From Cooperation Requirement Exemptions.** The parent or individual will not be required to provide information about the non-custodial or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be provided.

(3-17-22)( )

a. Good cause for failure to cooperate in obtaining support is: (3-17-22)

i. Proof the child was conceived ~~as a result~~ because of incest or forcible rape; (3-17-22)( )

ii. Proof the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent, or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source; and (3-17-22)( )

iii. Substantial and credible proof is provided indicating the custodial parent cannot provide the minimum information regarding the non-custodial parent. (3-17-22)

b. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. ~~The statement must list and~~ the reasons for the good cause claim. (3-17-22)

c. The cooperation requirement will be waived if good cause exists. No further action will be taken to establish paternity or obtain support. If good cause does not exist, the parent will be notified that they are not eligible to receive ~~Idaho Child Care program~~ ICCP benefits, until child support cooperation has been obtained.

(3-17-22)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. COPAYMENTS.**

Eligible families, except TAFI families participating in non-employment TAFI activities and guardians of foster children, must pay part of their child care costs. ~~Providers are responsible for ensuring families pay the determined child care costs and must not waive these costs.~~ (3-17-22)( )

**01. Poverty Rates Provider Responsibility.** ~~Poverty rates will be one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. The monthly rate will be calculated by dividing the yearly rate by twelve (12). Providers are responsible for ensuring families pay the determined child care costs and must not waive these costs.~~ (3-17-22)( )

**02. Calculating Family Payment.** Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment. (3-17-22)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**602. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.**

**01. Redetermination.** The Department will redetermine eligibility for child care benefits at least every twelve (12) months. (3-17-22)

**02. Graduated Phase Out.** At ~~the time of~~ redetermination, if a household's income exceeds one hundred ~~thirty~~ ~~seventy-five~~ percent (130/75%) of ~~the Federal Poverty Guidelines (FPG)~~ for a family of the same size eligible children may receive a graduated phase out benefit. ~~Graduated phase out benefits are~~ that is limited to twelve

(12) months following the completion of a redetermination ~~as defined in~~ under the Idaho Child Care State Plan. (3-17-22)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. HEALTH AND SAFETY REQUIREMENTS.**

All providers must comply with the health and safety requirements ~~listed in Subsections 802.01 through 802.13 of~~ under this rule. All providers must agree to an annual, unannounced health and safety inspection, ~~with the exception of except for~~ in-home child care ~~described in~~ under Section 401 of these rules. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. (3-17-22)( )

**01. Age of Provider.** All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (3-17-22)

**02. Sanitary Food Preparation.** Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (3-17-22)

**03. Food Storage.** All food served in child care facilities must be stored to protect it from potential contamination. (3-17-22)

**04. Hazardous Substances.** Medicines, cleaning supplies, and other hazardous substances must be handled safely and stored out of the reach of children. Biocontaminants must be disposed of appropriately. (3-17-22)

**05. Emergency Communication.** A telephone or some type of emergency communication system is required. (3-17-22)

**06. Smoke Detectors, Fire Extinguishers, and Exits.** A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (3-17-22)

**07. Hand Washing.** Each provider must wash ~~his~~ their hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (3-17-22)( )

**08. CPR/First Aid.** All providers must have current certification in pediatric rescue breathing (CPR) and pediatric first aid treatment from a certified instructor. (3-17-22)

**09. Health of Provider.** Each provider must certify that ~~he does~~ they do not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in ~~his~~ their care. (3-17-22)( )

**10. Child Abuse.** Providers must report suspected child abuse to the appropriate authority. (3-17-22)

**11. Transportation.** Providers who transport children as part of their child care operations must operate safely and legally, using child safety restraints and seat belts as required by state and local statutes. (3-17-22)

**12. Disaster and Emergency Planning.** Providers must have documented ~~policies and procedures~~ planning plans for emergencies resulting from a natural disaster, or man-caused event that include: (3-17-22)( )

**a. Procedures for** Evacuation, relocation, shelter-in-place, ~~and~~ lock-down procedures, and procedures for communication and reunification with families, continuity of operations, and accommodation of infants and toddlers; and children with disabilities, ~~and children with~~ or chronic medical conditions. (3-17-22)( )

- b. Procedures for staff and volunteer emergency preparedness training and practice drills. (3-17-22)
- c. Guidelines for the continuation of child care services in the period following the emergency or disaster. (3-17-22)

**13. Environmental Safety.** Building and physical premises must be safe, including identification of and protection from hazards that can cause bodily injury including electrical hazards, bodies of water, and vehicular traffic. (3-17-22)

**14. Safe Sleep.** Providers must place newborn infants to twelve (12) months in a safe sleep environment. Safe sleep practices include, alone, on their backs, and in a Consumer Product Safety Commission (CPSC) certified crib. (~~3-17-22~~)( )

**15. Behavior Management and Discipline.** Methods of behavior management and discipline for children must be positive, consistent, and based on each child's needs, stage of development, and behavior. Discipline is to promote self-control, self-esteem, and independence. Providers must certify that they will not harm, shake, or abuse children, and that children in their care will not experience maltreatment under 45 CFR 98.41. ( )