IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.15 - BEHAVIORAL HEALTH PROGRAMS

DOCKET NO. 16-0715-1501 (NEW CHAPTER - FEE RULE)

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 Title 39, Chapter 3, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

ORIGINATING LOCATION -- LIVE MEETING
Thursday, September 17, 2015
10:00 a.m. (MDT) / 9:00 a.m. (PDT) and
2:00 p.m. (MDT) / 1:00 p.m. (PDT)

Idaho Department of Health & Welfare -- Central Office
Conf. Room 3A (3rd Floor)
450 West State Street
Boise, ID 83702

VIDEO CONFERENCING

Region I Office – Coeur d'Alene **Main Conference Room** **2195 Ironwood Court** **Coeur d'Alene, ID 83814**	**Region II Office - Lewiston** **1st Floor Conference Room** **1118 "F" Street** **Lewiston, ID 83501**	**Region III Office - Caldwell** **Owyhee Conference Room (Rm 226)** **3402 Franklin Road** **Caldwell, ID 83605**
Region IV Office - Boise **Room 131** **1720 Westgate Drive, Suite A** **Boise, ID 83704**	**Region V Office - Twin Falls** **Room 116** **823 Harrison** **Twin Falls, ID 83301**	**Region VI Office - Pocatello** **Room 225** **421 Memorial Drive** **Pocatello, ID 83201**
Region VII Office - Idaho Falls **Conference Room 240** **150 Shoup Ave.** **Idaho Falls, ID 83402**	**State Hospital South - Blackfoot** **Admin. Bldg., Classroom A09** **700 E. Alice Street** **Blackfoot, ID 83221**	**State Hospital North** **Administration Conf. Rm. 234** **300 Hospital Drive** **Orofino, ID 83544**

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 is a new chapter of rule being written to meet the needs of the Department in developing a behavioral health system of care.

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

These rules have a flat fee structure of $100 per each behavioral health program location. This fee replaces fees that are currently being charged under IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs," which is being repealed in this same Bulletin under Docket 16-0720-1501.

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:

The fiscal impact for this rule change is anticipated to be cost-neutral for state general funds and all other funds. Currently, the Department collects a fee from alcohol and substance use disorders treatment and recovery support facilities that is $100 per facility for treatment and $50 per facility for recovery support services. The new fee structure will be a flat fee of $100 for each behavioral health program location.

It is difficult to estimate the number of providers who will choose to voluntarily be approved by the state. It is anticipated that the expected increase in fee receipts for those seeking approval of behavioral health programs will offset any cost increases for the administration of these programs.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted under the current chapter that this new chapter will replace.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at (208) 334-6611.

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 September 23, 2015.

DATED this 12th Day of August, 2015.

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**

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR FEE DOCKET NO. 16-0715-1501

IDAPA 16
TITLE 07
CHAPTER 15

16.07.15 - BEHAVIORAL HEALTH PROGRAMS

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department of Health and Welfare, as the State Behavioral Health Authority, the oversight of the state of Idaho's behavioral health services. Under Title 39, Chapter 31, Idaho Code, the Department is authorized to promulgate and enforce rules to carry out the purposes and intent of the Regional Behavioral Health Services Act. Under Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009 Idaho Code, the Director of the Department is authorized to adopt and enforce rules to supervise and administer a mental health program and services dealing with the problems of alcoholism including the care and rehabilitation of persons suffering from alcoholism. Under Title 39, Chapter 3, Idaho Code, the Board of Health and Welfare is authorized to adopt and enforce rules that set standards for the approval of substance use disorders agencies in the state of Idaho.
( )

001. TITLE, SCOPE, AND PURPOSE.

01. **Title**. The title of these rules is IDAPA 16.07.15, "Behavioral Health Programs." ( )

02. **Scope**. These rules set minimum standards for approved behavioral health programs in Idaho. ( )

03. **Purpose**. The purpose of these rules is to: ( )

a. Establish requirements for the approval, denial, suspension, or revocation of certificates of approval for approved behavioral health programs in Idaho; ( )

b. Set fees for the Department's approval process of applications and on-site reviews for behavioral health programs in Idaho; and ( )

c. Establish requirements for the health, safety, and environment of care for behavioral health programs in Idaho. ( )

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of these rules, or to the documentation of compliance with these rules. These documents are available for public inspection as described in Sections 005 and 006 of these rules. ( )

003. ADMINISTRATIVE APPEALS.
Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

004. INCORPORATION BY REFERENCE.
No documents are incorporated by reference as provided by Section 67-5229(a), Idaho Code. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

01. **Office Hours**. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

02. **Mailing Address**. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

03. **Street Address**. The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83702. ( )

04. **Telephone**. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

05. **Internet Website**. The Department's internet website is http://www.healthandwelfare.idaho.gov. ( )

06. **Substance Use Disorders Services Website**. The Substance Use Disorders Services internet website is http://www.substanceabuse.idaho.gov. ( )

07. **Mental Health Services Website**. The Mental Health Services internet website is http://www.mentalhealth.idaho.gov. ( )

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.

01. **Public Records**. The use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." Unless otherwise exempted by state or federal law, all public records in the custody of the Department are subject to disclosure. ( )

02. Public Availability of Licensure or Deficiencies. In compliance with Section 74-106(9), Idaho Code, and IDAPA 16.05.01.100.02, "Use and Disclosure of Department Records," records relating to behavioral health programs will be released to the public upon written request if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission, or position. These records will otherwise be provided in redacted form as required by law or rule. ( )

007. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. All owners, operators, employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide direct care or services, or whose position requires regular contact with participants, must comply with the provisions of IDAPA 16.05.06, "Criminal History and Background Checks." ( )

02. Availability to Work. An individual, listed in 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 his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application. ( )

a. An individual is allowed to work or have access to participants only under supervision until the criminal history and background check is completed. ( )

b. An individual, who does not receive a criminal history and background check clearance or a waiver granted under the provisions in these rules, may not provide direct care or services, or serve in a position that requires regular contact with participants. ( )

03. Waiver of Criminal History and Background Check Denial. An individual who receives an unconditional denial or a denial after an exemption review by the Department's Criminal History Unit, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with participants. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. ( )

04. No Waiver for Certain Designated Crimes. No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: ( )

a. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ( )

b. Incest, as defined in Section 18-6602, Idaho Code; ( )

c. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ( )

d. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ( )

e. Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ( )

f. Rape, as defined in Section 18-6101, Idaho Code; ( )

g. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ( )

h. Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ( )

i. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ( )

j. Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ( )

k. Any felony punishable by death or life imprisonment; or ( )

l. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ( )

05. Administrative Review. An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews for waivers of CHC denials described in Subsections 009.03 and 009.04 of this rule. ( )

06. Written Request for Administrative Review and Waiver. A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within thirty (30) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The thirty (30) day period for submitting a request for a waiver may be extended by the Department for good cause. ( )

07. Scheduling of Administrative Review. Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. ( )

08. Factors Considered During Administrative Review. During the administrative review, the following factors may be considered: ( )

a. The severity or nature of the crimes or other findings; ( )

b. The period of time since the incidents occurred; ( )

c. The number and pattern of incidents being reviewed; ( )

d. Circumstances surrounding the incidents that would help determine the risk of repetition; ( )

e. The relationship between the incidents and the position sought; ( )

f. Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation. ( )

g. A pardon that was granted by the Governor or the President; ( )

h. The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and ( )

i. Any other factor deemed relevant to the review. ( )

09. Administrative Review Decision. A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review. ( )

10. Decision to Grant Waiver. The Department's decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under these rules is not a criminal history and background check clearance. A waiver is only applicable to the specified individual on the waiver and for behavioral

health services and programs governed under these rules. The waiver does not apply to other Department programs that require a clearance for a Department criminal history and background check. ( )

11. Revocation of Waiver. At any time, the Department may revoke a waiver at its discretion for circumstances that it identifies as a risk to participants' health and safety. ( )

12. Waiver Decisions Are Not Subject to Review or Appeal. The decision or actions of the Department concerning a waiver are not subject to review or appeal, administratively, or otherwise. ( )

13. Employer Responsibilities. A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer. ( )

010. DEFINITIONS.
For the purposes of these rules, the following terms are used. ( )

01. Behavioral Health Program. A behavioral health program refers to an organization offering mental health or substance use disorders treatment services which includes the organization's facilities, management, staffing patterns, treatment, and related activities. ( )

02. Certificate of Approval. A certificate issued by the Department to a behavioral health program which the Department deems to be in compliance with these rules. ( )

03. Critical Incident. An event that caused, or could have caused physical or emotional distress to staff, visitors, or the participants of the program. ( )

04. Department. The Idaho Department of Health and Welfare, or its designee. ( )

05. Director. The Director of the Department of Health and Welfare, or designee. ( )

06. Good Cause. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. ( )

07. Participant. An individual seeking or receiving behavioral health program treatment services. The term "participant" is synonymous with the terms "patient," "resident," "consumer," "client," or "recipient of treatment." ( )

08. Variance. The means of complying with the intent and purpose of a behavioral health program rule in a manner acceptable to the Department other than that specifically prescribed in the rule. ( )

09. Waiver. The means to allow an individual who is unable to pass a Department criminal history background check to provide services in an approved behavioral health program. Waivers are only for a specified individual for the sole purpose of providing behavioral health services. ( )

011. -- 049. (RESERVED)

050. VARIANCE FOR BEHAVIORAL HEALTH PROGRAM.
The Department may grant a variance from compliance with a specific behavioral health program requirement when the variance will not violate an existing state or federal law or jeopardize health, safety, or welfare of individuals. ( )

01. Written Request. A behavioral health program must submit a written request to the Department for a variance. The request must include the following: ( )

a. Reference the section of the rules for which the variance is requested; and ( )

b. Good cause for such a variance and how the health, welfare, or safety of participants will not be jeopardized if a variance is granted. ( )

02. Decision to Grant a Variance. The decision by the Department to grant a variance does not set a precedent for subsequent behavioral health program requests nor will it be given any effect in any other proceeding. ( )

03. Revocation of Variance. The Department may revoke a variance at any time when circumstances identify a risk to participants' health or safety. ( )

051. -- 074. (RESERVED)

075. SUBSTANCE USE DISORDERS SERVICES.
An approved behavioral health program providing substance use disorder services must comply with all requirements in IDAPA 16.07.17, "Substance Use Disorders Services," and the requirements and minimum standards required in these rules. ( )

076. -- 099. (RESERVED)

100. CERTIFICATE OF APPROVAL.
Under the standards and requirements in these rules, the Department may approve behavioral health programs that provide outpatient mental health services or programs that provide substance use disorders services, or both. Each approved behavioral health program must meet the standards and requirements of these rules in order to obtain and maintain a Department certificate of approval. ( )

01. List of Approved Behavioral Health Programs. The Department will maintain a list of approved behavioral health programs. The issuance of a certificate of approval from the Department does not guarantee adequacy of individual care, treatment, personal safety, fire safety, or the well-being of any participant, employee, contractor, volunteer, or occupant of the program. The provider of a behavioral health program with a certificate of approval is responsible to ensure the adequacy and quality of care being provided to its participants. ( )

02. Approved Behavioral Health Programs with Multiple Locations. A behavioral health program may have more than one (1) location in which it provides services. ( )

a. Each location of the behavioral health program must comply with the requirements and minimum standards in these rules in order to operate, manage, conduct, or maintain, directly or indirectly, an approved behavioral health program. ( )

b. When a behavioral health program applies for certificates of approval for multiple locations, denial of a certificate of approval at a specific location will not affect the other behavioral health program's location applications that have not been denied. ( )

101. -- 109. (RESERVED)

110. INITIAL APPLICATION FOR CERTIFICATE OF APPROVAL.
Each behavioral health program must apply to the Department for a certificate of approval. ( )

01. Obtain and Complete Application. Initial application forms for a behavioral health program may be obtained upon written request or online at the Department of Health and Welfare as identified in Section 005 of these rules. The applicant must provide a completed application to the Department prior to receiving a certificate of approval for a behavioral health program. ( )

02. Signed Application. Each applicant must sign and provide a completed application and site form for each location. ( )

03. Application Fee. A non-refundable application fee of one hundred dollars ($100) for each behavioral health program location must be included with the application. ( )

04. Certificate of Assumed Business Name. A copy of the "Certificate of Assumed Business Name" obtained from the Idaho Secretary of State must be included with the behavioral health program's application. ( )

05. Certificates or Permits. A copy of each current and valid certificate or permit must be included as appropriate: ( )

a. Certificate of Occupancy from the local building authority for each location; ( )

b. Certificate of fire inspection conducted by the State fire marshal or local authority for each location; and ( )

06. Proof of Insurance. Each behavioral health program must maintain minimum insurance policy to cover both professional liability and commercial general liability. Behavioral Health Programs are responsible for maintaining additional insurance coverage as appropriate for the various services, funding sources, interventions, and populations served. ( )

07. Agreement for Site Inspection. A signed agreement for each behavioral health program site inspection location as determined by the Department. ( )

08. Other Information Requested. Other information that may be requested by the Department for the proper administration and enforcement of these rules. ( )

111. -- 119. (RESERVED)

120. RENEWAL OF CERTIFICATE OF APPROVAL.
Each approved behavioral health program must apply for renewal of the program to the Department at least ninety (90) calendar days prior to the expiration date on the current certificate of approval. ( )

01. Obtain and Complete Renewal Application Form. A completed and signed renewal application form must be submitted to the Department. Application for renewal forms are available upon written request or online at the Department of Health and Welfare as identified in Section 005 of these rules. ( )

02. Renewal Application Fee. A non-refundable renewal application fee of one hundred dollars ($100) for each behavioral health program location being renewed must be included with each renewal application. ( )

03. Proof of Insurance. Each behavioral health program must maintain minimum insurance policy to cover both professional liability and commercial general liability. Behavioral Health Programs are responsible for maintaining additional insurance coverage as appropriate for the various services, funding sources, interventions, and populations served. ( )

04. Changes to Behavioral Health Programs. The behavioral health program must disclose any changes to the program that have occurred during the current certification period. ( )

05. Other Information Requested. Other information that may be requested by the Department for the proper administration and enforcement of these rules. ( )

121. -- 129. (RESERVED)

130. FAILURE TO COMPLETE APPLICATION PROCESS.
Failure of the applicant to cooperate with the Department or complete the application process within six (6) months of the original date of application will result in a denial of the application. If the application is denied, the applicant is barred from submitting, seeking, or obtaining another application for a certificate of approval for a period of one (1) year from the date of the original application. ( )

131. -- 139. (RESERVED)

140. BEHAVIORAL HEALTH PROGRAM -- DEEMING.

01. National Accreditation. The Department will deem a nationally accredited behavioral health program to be in compliance with the minimum standards and rule requirements in these rules. ( )

02. Tribal Programs. The Department will deem Indian Health Services programs and may deem other tribal facilities that provide behavioral health services as a state approved behavioral health program. ( )

03. Proof of Accreditation. The applicant must submit a copy of accreditation results and reports regarding accreditation from the accrediting agency with their application. ( )

04. Additional and Supplemental Information. To address requirements for a state-approved behavioral health program, the Department may require an applicant to provide additional or supplemental information not covered under the national accreditation or certification requirements. Additional documents may include: ( )

a. An organizational chart with verification that staff meet minimum certification standards; ( )

b. Satisfactory evidence that a criminal history and background check clearance, or waiver, has been issued by the Department for each individual required in Section 009 of these rules to have a criminal history check or whose position requires regular contact with participants. ( )

141. -- 149. (RESERVED)

150. DEPARTMENT REVIEW OF APPLICATION FOR APPROVAL OR RENEWAL.
A behavioral health program must submit a completed application and supporting documentation as required by the Department in Sections 110 and 120 of these rules. Upon receipt of the completed application for approval or renewal of a behavioral health program, the Department will review the application to determine if the program meets the minimum standards and requirements of these rules to be an approved behavioral health program. ( )

151. TYPE OF APPROVALS ISSUED.
Each behavioral health program and location application will be reviewed by the Department and notification of the results will be provided to the applicant in writing, sixty (60) business days after the Department's receipt of a completed application. Results of application reviews are provided in Subsection 151.01 through 151.03 of this rule. ( )

01. Approved Program. When the Department determines that the program meets the requirements of these rules, the behavioral health program is issued a certificate of approval. ( )

02. Provisionally Approved Program. When the Department determines that the program may meet the requirements of these rules, the program may be given: ( )

a. A provisional approval for a certain period of time to correct any issue; or ( )

b. An on-site review may be scheduled for final determination. The Department will make reasonable efforts to schedule an on-site inspection within thirty (30) business days of its initial determination. ( )

03. Denial of Program. When the Department determines that the program does not meet the requirements of these rules, the applicant will be notified of the denial, and the application returned with written recommendations for correction and completion of the recommendations. ( )

152. ON-SITE REVIEW.
Each behavioral health program must be in compliance with these rules and is subject to on-site review by the Department to obtain and maintain an approved behavioral health program. ( )

01. Department Inspection. The applicant or behavioral health program must allow the Department to inspect the program or locations at: ( )

a. Any reasonable time necessary to determine compliance with these rules; and ( )

b. Prior notice to the applicant or behavioral health program is not required, when the Department receives or has concerns regarding complaints, non-compliance, or health and safety issues. ( )

02. Compliance with Confidentiality Requirements. The applicant or behavioral health program must be in compliance with federal and state confidentiality requirements, and provide for review of the following: ( )

a. Program policies and procedures; ( )

b. Personnel records; ( )

c. Clinical records; ( )

d. Facility accessibility; ( )

e. The program's internal quality assurance plan and process that demonstrates how the program evaluates program effectiveness and individual participant satisfaction; and ( )

f. Any other documents required by the Department in order to make an appropriate determination, including any information that may have changed since the time the application or renewal was submitted. ( )

153. CERTIFICATE OF APPROVAL DURATION.
A behavioral health program certificate of approval is effective for three (3) years from the date the Department issues the Certificate of Approval. The behavioral health program and each of its locations' Certificate of Approval are subject to the program maintaining compliance with these rules. ( )

154. CHANGE IN LOCATION.
A behavioral health program must notify the Department in writing a minimum of thirty (30) calendar days prior to any change in location and must submit required documentation for approval of the new location. The new location is subject to an on-site review as determined by the Department. ( )

155. CHANGE OF PROGRAM NAME.
A behavioral health program must notify the Department in writing a minimum of thirty (30) calendar days prior to a change in name of program or business. A copy of the "Certificate of Assumed Business Name," must be included. ( )

156. -- 199. (RESERVED)

200. DENIAL OF CERTIFICATE OF APPROVAL OR RENEWAL.
The Department may deny a Certificate of Approval or Renewal application when the Department determines that a behavioral health program is out of compliance with these rules for any of the following reasons. ( )

01. Reasons for Denial. The owner, applicant, or administrator; ( )

a. Has violated any conditions of a certificate of approval; ( )

b. Has been found guilty of fraud, deceit, misrepresentation, or dishonesty associated with the operation of a program, regardless of the population the program serves or the services the agency provides; ( )

c. Has willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval. ( )

02. Act or Omission Adversely Affecting the Welfare of Any Participant, Employee, Contractor, or Volunteer. Any act or omission adversely affecting the welfare of any participant, employee, contractor, or volunteer that is being permitted, aided, performed, or abetted by the facility, applicant, owner, administrator. Such acts or omissions may include: neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation of children or vulnerable adults. ( )

201. REVOCATION OR SUSPENSION OF CERTIFICATE OF APPROVAL.

01. Immediate Suspension or Revocation. The Department may, without prior notice, suspend or revoke a certificate of approval when the Department determines conditions exist that endanger the health or safety of any participant, employee, contractor, or volunteer. ( )

02. Suspension or Revocation With Notice. The Department may suspend or revoke a certificate of approval by giving written notice fifteen (15) business days prior to the effective date when the Department determines: ( )

a. The program is not in compliance with these rules and minimum standards; ( )

b. The owner, applicant, or administrator: ( )

i. Without good cause, fails to furnish any data, statistics, records, or information requested by the Department, or files fraudulent returns thereof; ( )

ii. Has been found guilty of fraud, deceit, misrepresentation, or dishonesty associated with the operation of a program, regardless of the population the program serves or the services the agency provides; ( )

iii. Has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a program approval; or ( )

c. Any act adversely affecting the welfare of participants is being permitted, aided, performed, or abetted such as: neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation. ( )

202. WRITTEN NOTICE OF DENIAL, SUSPENSION, OR REVOCATION.

01. Written Notice of Denial, Suspension, or Revocation. With the exception of endangerment to an individual's health or safety under Section 201, the Department will, within fifteen (15) business days of making its decision, notify the applicant or the owner's designated representative, in writing, by certified mail, return receipt requested, of its determination, in the event an application or certificate of approval is denied, suspended, or revoked, The written notice must include the following: ( )

a. The applicant's or owner's name and identifying information; ( )

b. A statement of the decision; ( )

c. A concise statement of the reasons for the decision; and ( )

d. The process for pursuing an administrative appeal. ( )

02. Effect of Previous Denial or Revocation. ( )

a. The Department will not accept or consider an application for a certificate of approval from any applicant, owner, administrator, related person, or entity who has had a certificate of approval denied until after two (2) years have elapsed from the date of the denial. ( )

b. The Department will not accept or consider an application for a certificate of approval from any

applicant, owner, administrator, related person, or entity who has had a certificate of approval revoked until after five (5) years have elapsed from the date of the revocation. ( )

203. CUMULATIVE ENFORCEMENT POWERS.
When the Department determines that a behavioral health program does not meet these rules and minimum standards, it may take any of the enforcement actions described in these rules or impose any remedy, independently or in conjunction, with any others authorized by law or these rules. ( )

204. -- 299. (RESERVED)

300. PROGRAM ADMINISTRATION REQUIREMENTS.

01. Ownership. Each behavioral health program must maintain documentation of the program's governing body, including a description of membership and authorities, and documentation of the programs: ( )

a. Articles, certificate of incorporation, and bylaws, when the owner is a corporation; ( )

b. Partnership agreement when the owner is a partnership; or ( )

c. Sole proprietorship if one (1) person is the owner. ( )

02. Organizational Chart. Each behavioral health program must maintain a current organizational chart that clearly delineates staff positions, lines of authority, and supervision. ( )

03. Administrator. Each behavioral health program must have provisions for an administrator who is responsible for the day-to-day operation of the program. ( )

04. Authority and Responsibilities of the Administrator. Each behavioral health program's administrative policies must state the administrator's responsibilities in assisting with the overall operation of the program. Responsibilities of the administrator include the following: ( )

a. Ensure administrative, personnel, and clinical policies and procedures are adhered to and kept current to be in compliance with these rules; ( )

b. Ensure all persons providing clinical services are licensed, credentialed, or certified for their scope of practice; ( )

c. Overall direction and responsibility for the individuals, program, facility, and fiscal management; ( )

d. Overall direction and responsibility for supervision of staff; ( )

e. The selection and training of a capable staff member who can assume responsibility for management of the program in the administrator's absence; and ( )

f. Comply with or maintain a management information system that allows for the efficient retrieval of data needed to measure the program's performance. ( )

05. Notification of Change in Ownership. A certificate of approval is not automatically transferable when ownership or control is changed. The administrator must inform the Department in writing within ten (10) business days of any such change. The Department may continue the certificate of approval provisionally until it can determine the status of the program under the new ownership or control. ( )

06. Notification of Program Closure. ( )

a. A program must notify the Department in writing within thirty (30) business days prior to an anticipated closure of any of its program locations. ( )

b. The notification of closure must include: ( )

i. Location of closure; ( )

ii. Location(s) of where participants records will be maintained; ( )

iii. Explanation of the closure; and ( )

iv. Procedures for participant transition and continuation of care. ( )

301. -- 309. (RESERVED)

310. DESCRIPTION OF SERVICES.
Each behavioral health program must prepare a written description of services that meets the requirements of this rule. ( )

01. Content of Description of Services. The written description must contain: ( )

a. Description of services provided; ( )

b. Participant population served; ( )

c. Hours and days of operation; and ( )

d. Summary of assessment, intake, and admission process. ( )

02. Distribution of Descriptions of Services. The written description of services must be made known and available to all program staff and to the administrator. ( )

311. -- 319. (RESERVED)

320. ADMISSION POLICIES AND PROCEDURES.
Each behavioral health program must have written policies and procedures governing the program's admission process. These polices must be available to participants, their families, and to the general public. ( )

01. Participant Admission. Each program's admissions policies must: ( )

a. Align with the program's scope of care and make reasonable accommodations to provide participants with appropriate access. ( )

b. At the time of initial contact with a participant, pre-screening for admissions must be completed. This includes identification of potential barriers to entrance of care and removal of those barriers when possible. ( )

c. Notify and inform participants of the reasons for ineligibility, provide referrals or other information necessary to help link participants to a program that can meet the needs identified in the participant's pre-screening. ( )

d. Provide the appeal process available and documented to address situations in which a participant does not agree with the admission determination made by the program. The process may include internal or external reviews, and involve a neutral party. ( )

02. Entrance to Care. Each program must have documented protocols for entrance to care that include: ( )

a. Protocols for the screening process that: ( )

i. Ensure that each participant is engaged in care as soon as possible following initial contact and screening; ( )

ii. Ensure the screening instrument is designed to identify emergent needs, crisis situations, and dangerous substance abuse with protocols in place for staff members to respond according to each situation revealed during a screening; ( )

iii. Ensure screening documentation protocol includes basic demographic information about the prospective participant, participant's strengths, needs, preferences, goals, eligibility decision, and basis for the decision and include referrals, if provided; and ( )

iv. Ensure policies are in place that require staff members administering the screening instrument to be appropriately trained. ( )

b. Protocols for the implementation of a waiting list that: ( )

i. Ensure prospective participants are screened and evaluated for appropriateness to services offered prior to placement on a waiting list; and ( )

ii. Offer a referral process for an individual pre-screened and ineligible, and facilitate referrals when needed. ( )

03. Orientation. Each program must have procedures that: ( )

a. Provide orientation to each participant as soon as possible upon beginning care, considering the participant's presenting state and what services are being accessed. ( )

b. Document attendance of each participant to orientation. ( )

c. Educate each participant on: participants' rights and responsibilities, grievance and appeal procedures, how participant may provide feedback, confidentiality, consent to treatment, expectations of participants, discharge criteria, handling of potential risk to participant, after-hours services accessibility, follow-up procedures, financial obligations and funding sources available, health and safety policies, facility layout, assessment, process of treatment, and names of staff members. ( )

d. Ensure that both written and verbal information provided during orientation is delivered in such a way that is understandable by each participant. ( )

321. -- 329. (RESERVED)

330. QUALITY ASSURANCE.
Each behavioral health program must have an internal quality assurance plan and written process to evaluate and improve administrative practices and clinical services. ( )

01. Quality Assurance Plan. Each program must have a quality assurance plan that: ( )

a. Addresses clinical supervision and training of staff. ( )

b. Monitors compliance with these rules. ( )

c. Establishes a process for reviewing and updating written policies and procedures. ( )

d. Continuously improves the quality of care in the following: ( )

i. Cultural Competency; ( )

ii. Use of evidence-based and promising practices; and ( )

iii. Response to critical incident, complaints, and grievances. ( )

02. Method of Evaluation. Each program's written process must describe how administrative practices and clinical services will be evaluated. ( )

03. Review Schedule. Each program's written process must include the frequency that administrative practices and clinical services will be evaluated. ( )

04. Procedure to Address Deficiencies. Each program's written process must describe how deficiencies in administrative practices or clinical services, identified during an evaluation process, will be improved to meet the program's standards of quality. ( )

331. -- 339. (RESERVED)

340. ASSESSMENT.
Each behavioral health program must have a written procedure for an assessment process that determines the individual participant needs. ( )

01. Assessment Required. A qualified behavioral health professional must develop a written assessment for each participant. ( )

02. Content of Assessment. The assessment must evaluate the participant's current and past behavioral, social, medical, and treatment needs as well as the participant's strengths, needs, abilities, preferences, and goals. ( )

341. INDIVIDUALIZED SERVICE PLANS.

01. Individualized Service Plan Required. Each participant must have an individualized service plan. The development of the service plan must be a collaborative process involving the participant and other support and service systems. ( )

02. Service Plan Based on Assessment. The service plan must be based on the findings of the participant's assessment. ( )

03. Development and Implementation of the Service Plan. The responsibility for the development and implementation of the service plan will be assigned to a qualified behavioral health professional. ( )

04. Content of the Service Plan. Each participant's individualized service plan must include the following: ( )

a. Services deemed clinically necessary to meet the participant's behavioral health needs; ( )

b. Referrals for needed services not provided by the program; ( )

c. Goals that are based on the participant's unique strengths, abilities, preferences, and needs; ( )

d. Specific objectives that relate to the goals written in simple, measurable, attainable, realistic terms with expected achievement dates; ( )

e. Identified level of care or interventions that describe the kinds of services and service frequency; ( )

f. Criteria to be met for discharge from service; ( )

g. A plan for services to be provided after discharge; and ( )

h. Documentation of who participated in the development of the individualized service plan. ( )

342. -- 349. (RESERVED)

350. CRISIS INTERVENTION AND RESPONSE.

01. Requirement for Written Procedures. Each behavioral health program must have written procedures that address interventions and responses to behavioral health crisis situations. ( )

02. Content of Written Procedures. The written procedures must include: ( )

a. Guidance for staff members on how to effectively intervene and respond to a wide range of crisis situations; ( )

b. Program definition of "crisis" as it applies to the services provided and population served; ( )

c. Program scope as it relates to the ability to intervene or respond to crises; ( )

d. Actions to be taken if the program is not prepared or qualified to handle certain crisis situations; and ( )

e. Protocol for managing crises during and outside of business hours. ( )

351. -- 359. (RESERVED)

360. PARTICIPANT RECORDS.

01. Participant Record Required. Each behavioral health program must maintain a participant record on each participant. All entries into the participant's record must be signed and dated. ( )

02. Content of Participant Record. The participant record must describe the participant's situation at the time of admission and include the services provided, all progress notes, and the participant's status at the time of discharge. At a minimum the record must contain: ( )

a. The participant's name, address, contact information, date of birth, gender, marital status, race or ethnic origin, next of kin or person to contact, educational level, type and place of employment, date of initial contact or admission to the program, source of any referral, legal status including relevant legal documents, name of personal physician, record of any known drug reactions or allergies, and other identifying data as indicated; ( )

b. Any staffing notes pertaining to the participant; ( )

c. Any medical records obtained regarding the participant; ( )

d. Any assessments; and ( )

e. The initial and updated service plans. ( )

03. Maintenance of Participant Records. Each program must develop written policies and procedures governing the maintenance, compilation, storage, dissemination, and accessibility of participant records. ( )

04. Retention and Destruction of Participant Records. Each program must develop written policies and procedures governing the retention and destruction of participant records. ( )

361. -- 369. (RESERVED)

370. PARTICIPANT RIGHTS.
Each behavioral health program must have a written a statement of individual participant rights. The program must ensure and protect the fundamental human, civil, constitutional, and statutory rights of each participant. ( )

01. Content of Participant's Rights. The written participant rights statement must, at a minimum, address the following rights: ( )

a. The right to impartial access to treatment and services, regardless of race, creed, color, religion, gender, national origin, age, or disability. ( )

b. The right to a humane treatment environment that ensures protection from harm, and provides privacy to as great a degree as possible with regard to personal needs, and promotes respect and dignity for each individual. ( )

c. The right to communication in a language and format understandable to the participant. ( )

d. The right to be free from mental, physical, sexual and verbal abuse, neglect, and exploitation. ( )

e. The right to receive services within the least restrictive environment possible. ( )

f. The right to an individualized service plan, based on assessment of current needs. ( )

g. The right to actively participate in planning for treatment and recovery support services. ( )

h. The right to have access to information contained in one's record, unless access to particular identified items of information is specifically restricted for that individual participant for clear treatment reasons in the participant's treatment plan. ( )

i. The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual's consent. ( )

j. The right to refuse to take medication unless a court of law has determined the participant lacks capacity to make decisions about medications and is an imminent danger to self or others. ( )

k. The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others. ( )

l. The right to refuse to participate in any research project without compromising access to program services. ( )

m. The right to exercise rights without reprisal in any form, including the ability to continue services with uncompromised access. ( )

n. The right to have the opportunity to consult with independent specialists or legal counsel, at one's own expense. ( )

o. The right to be informed in advance of the reason for discontinuance of service provision, and to be involved in planning for the consequences of that event. ( )

p. The right to receive an explanation of the reasons for denial of service. ( )

02. Participant Understands Rights and Expectations. Each program's policies must ensure that: ( )

a. Materials describing a participant's rights and expectations are presented to each participant in a manner that he can understand; ( )

b. Information is provided in a manner that is understandable to each participant who has challenges with vision, speech, hearing, or cognition. ( )

c. There is a protocol for facilitating situations when a participant is not able to give informed consent for treatment services. Facilitation may include assisting the participant to access family members, attorneys, or other supports. ( )

03. Participant Grievances and Complaints. Each program's grievance and complaint policies must: ( )

a. Establish practices to respond to a participant grievances, complaints, or appeals. Practices must include an established response process, levels of review, and expectations for written notification of actions to address the concerns; ( )

b. Ensure a participant who registers a grievance, complaint, or appeal is not subjected to retaliation; ( )

c. Respond to participant grievances, complaints, or appeal in a timely manner, and ensure the participant is informed as to the process time frames and expected date for decisions; ( )

d. Provide each participant with information as to the grievance process and with access to any grievance or complaint forms. The program is responsible for ensuring that each participant understands the forms and procedures for registering a grievance, complaint, or appeal; and ( )

e. Retain documentation on formal grievances, complaints, or appeals. Information from these procedures is used to inform practice and improve services. ( )

371. -- 379. (RESERVED)

380. ADMINISTRATION OF MEDICATIONS.

01. Behavioral Health Program That Administers Medications. Each behavioral health program that administers medications must have policies and procedures that include the following: ( )

a. Receiving of medications; ( )

b. Storage of medications; and ( )

c. Medications administration system to be used. ( )

02. Registration With the Idaho Board of Pharmacy. Each program that dispenses medication must have appropriate registration with the Idaho Board of Pharmacy in accordance with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," and maintain current documentation of such registration. ( )

381. -- 389. (RESERVED)

390. PERSONNEL POLICIES AND PROCEDURES.
Each behavioral health program must have and adhere to personnel policies and procedures that meet the minimum requirements in this rule. ( )

01. Required Personnel Policies and Procedures. Personnel policies and procedures must be developed, implemented, and maintained to promote the objectives of the program and provide for a sufficient number of qualified clinical and support staff to render the services of the program and provide quality care during all hours of operation. ( )

a. The personnel policies and procedures must establish the requirement for CPR training and basic

first aid training. A minimum of one (1) CPR and First Aid trained staff must be on-site during business hours.( )

b. The personnel policies must include procedures for orientation to the program and training on all program policies and procedures for staff, trainees, student interns, volunteers, and contractors, if applicable. ( )

02. Hiring Practices. Hiring practices must be specified in the written policies and procedures and must be consistent with the needs of the program and its services. ( )

03. Equal Employment Opportunity. No behavioral health program approved under these rules will discriminate on the basis of race, creed, color, religion, age, gender, national origin, veteran status, or disability, except in those instances where bona fide occupational qualifications exist. ( )

04. Content of Personnel Record for Each Staff Member. A personnel record must be kept on each staff member and must contain the following items: ( )

a. Application for employment including a record of the employee's education or training and work experience. This may be supplemented by a resume; ( )

b. Primary source documentation of qualifications; ( )

c. Performance appraisals or contract compliance evaluation; ( )

d. Disciplinary actions; and ( )

e. Verification of a Department criminal history and background check clearance, or a waiver issued by the Department as described in Section 009 of these rules. ( )

05. Volunteers. In programs where volunteers are utilized the objectives, scope, training, and orientation of the volunteer services must be clearly stated in writing. ( )

06. Trainees and Student Interns. In programs where trainees or student interns, or both, are utilized the supervision, scope, training, and orientation of trainees and student interns must be clearly stated in writing. ( )

391. STAFFING AND SUPERVISION.

01. Ensuring Adequate Staff. Each behavioral health program must ensure that there are an adequate number of staff to: ( )

a. Meet service needs of program participants; ( )

b. Meet professional staff-to-participant ratios at a level that meets best practice standards for each service being provided; ( )

c. Address the safety needs of program staff and participants; and ( )

d. Meet organizational performance expectations and needs. ( )

02. Staff Supervision. Each program must ensure that: ( )

a. Staff have access to regularly scheduled supervision with program supervisors. ( )

b. Supervision process for staff members practice only within the scope of their credentials. ( )

03. Clinical Supervision. Each program must provide for regular and ongoing supervision of clinical activities. The program must establish a written supervisory protocol that addresses: ( )

a. Management and oversight of the provision of professional services offered by the program; and ( )

b. Supervision centered on the evaluation and improvement of clinician skills, knowledge, and attitudes. ( )

392. -- 394. (RESERVED)

395. INFECTION CONTROL.
Each behavioral health program must have infection control policies and procedures consistent with recognized standards that control and prevent infections for both staff and participants. ( )

01. Written Policies and Procedures for Infection Control. Each program must have written policies and procedures pertaining to the operation of an infection control program. ( )

a. Effective measures must be developed to prevent, identify, and control infections. ( )

b. A process for implementing procedures to control the spread or eliminate the cause(s) of the infection must be described in the policies and procedures. ( )

c. All new employees must be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program. ( )

d. There must be documentation that on-going in-service education in infection prevention and control is provided to all employees. ( )

e. There must be documentation that the policies and procedures are reviewed at least annually and revised as necessary. ( )

02. Universal Precautions. Universal precautions must be used in the care of participants to prevent transmission of infectious disease according to the "Centers for Disease Control and Prevention (CDC) guidelines." ( )

396. -- 399. (RESERVED)

400. ENVIRONMENT REQUIREMENTS.
Each behavioral health program location must have appropriate space, equipment, and fixtures to meet the needs of participants and ensure a safe environment for staff, participants, and visitors. ( )

01. Fixtures and Equipment. Fixtures and equipment designated for each service must be constructed or modified in a manner that provides pleasant and functional areas that are accessible to all participants regardless of their disabilities. ( )

02. Office Space. Private space must be provided for personal consultation and counseling as well as family and group counseling sessions. ( )

03. Safety, Fire, Health, and Sanitation Requirements. Space, equipment, and facilities utilized by the program must meet federal, state, and local requirements for safety, fire prevention, health, and sanitation. ( )

04. Procedure for Accessibility for Persons with Mobility and Sensory Impairments. The program must have a written policy and procedure for compliance with ADA requirements for participants with mobility or sensory impairments. ( )

05. Smoking. Because smoking has been acknowledged to be a potential fire hazard, continuous efforts must be made to reduce such hazards in the facility. Written regulations governing the use of smoking materials must be adopted, conspicuously posted, and made known to all program participants, staff members, and the public. Nothing in this section requires that smoking be permitted by programs whose admission policies prohibit

smoking. ( )

a. Designated areas must be assigned for participant, staff, and public smoking, when smoking is allowed. ( )

b. Tobacco products must not be used by children, adolescents, staff, volunteers, or visitors in any building used to house children or adolescents, or in the presence of children or adolescents, or in vehicles used to transport children or adolescents. ( )

401. -- 409. (RESERVED)

410. EMERGENCY PREPAREDNESS.
Each behavioral health program must establish and maintain an Emergency Preparedness plan designed to manage the consequence of natural disasters or other emergencies. ( )

01. Emergency Preparedness Plan. Program staff must be provided with training on the emergency preparedness plan including; ( )

a. Where and how participants are to be evacuated; and ( )

b. Notification of emergency agencies. ( )

02. Evacuation Drills. The program conducts evacuation drills on a regular basis. A record of drills must be maintained which includes the date and time of the drill, response of the personnel and participants, problems encountered, and recommendations for improvements. ( )

411. MEDICAL EMERGENCY SERVICES.

01. Medical Emergency Services Plan. Each behavioral health program must have a written plan describing the manner in which medical emergency services will be accessed. ( )

02. Safety Devices and Practices. ( )

a. Locations that do not have emergency medical resources must have first aid kits. ( )

b. All staff must be familiar with the locations, contents, and use of the first aid kits. ( )

412. CRITICAL INCIDENT PREPAREDNESS.
Each behavioral health program must develop and implement policies and procedures that discuss prevention, reporting, documentation, and managing critical incidents. ( )

413. -- 419. (RESERVED)

420. FACILITY REQUIREMENTS.
Each behavioral health program must ensure that each location is structurally sound, maintained, and equipped to ensure the safety of staff, participants, and visitors. ( )

01. Buildings. Buildings on the premises of each behavioral health program location in which services are delivered must be in compliance with the requirements of the local, state, and federal codes concerning access, construction, and fire and life safety that are applicable. ( )

02. Grounds. Each behavioral health program's grounds must be maintained in a manner that is designed to provide a safe environment for staff, participants, and visitors. ( )

421. -- 999. (RESERVED)