

Changes to IDAPA 16.03.11

Rules Governing Intermediate Care Facilities
for Persons with Intellectual Disabilities

IDAPA 16.03.11

- ▶ Effective July 1, 2015
 - ▶ Align with Federal Regulations
 - ▶ Remove Antiquated Materials
 - ▶ Provide Clarification

As of July 1, 2015, the revisions to the Idaho Administrative Procedures Act, section 16.03.11, Rules Governing Intermediate Care Facilities for Persons with Intellectual Disabilities, went into effect. The changes were made to better align the State rules with the Federal requirements for ICFs/ID, remove antiquated materials such as outdated food and nutrition information, and provide clarification for some issues such as allowable behavioral intervention techniques.

Incorporated By Reference

- ▶ Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication.

The biggest change that will be noticed is the incorporation of the Federal Regulation by reference. This simply means the requirements found in the Federal Regulations have force and effect of law in the State of Idaho. You will not see a reprinting of the actual Federal Regulations in the new IDAPA document, simply a reference to the Code of Federal Regulation (CFR) number.

Incorporated By Reference

- ▶ The incorporated documents are Code of Federal Regulations (CFR), 42 CFR Part 48, 42 CFR 1001.1301, and 42 CFR 442.101; IDAPA 07.03.01, “Rules of Building Safety;” and National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (Edition 2000).

In addition to 42 CFR Part 48, which is the section of Federal Code that includes requirements for ICFs/ID, 42 CFR 1001.1301 which speaks to granting access for the survey process and 42 CFR 422.101 which speaks to certification processes were also incorporated. IDAPA 07.03.01 which are the Rules of Building Safety, and the National Fire Protection Association Life Safety Code were also incorporated.

State Reports

- ▶ **More condensed**
 - Former Rules:
 - Citation at W246 = no corresponding State rule
 - Citation at W262 = citation at M194
 - Citation at W263 = citation at M196
 - New Rules:
 - Citations at W246, W262 and W263 = citation at M159
- ▶ **Stand alone deficiencies**
- ▶ **Narrative Reports for all condition level surveys**

These revisions will cause some minor changes to what you see in the State reports you receive following a survey.

You will still see referrals to the W tags in the Federal report, but they will be more condensed. For example, under the old rules there were not always corresponding State rules. For example, W246 states the facility must ensure individuals that have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom. No such State rule was present, so no citation would have been evident in the State report. However, if the facility was cited at W262 for lack of HRC approval and W263 for lack of guardian consent for restrictive intervention, you would have seen State citations at both M194 and M196.

Under the new rules, Federal deficiencies at W246, W262 and W263 would all be referred in the State report under M159, which is the State tag that incorporates all the Federal requirements under the Condition of Participation for Active Treatment.

You will still see narrative citations for those stand-alone State rules – requirements of State rule that do not have corresponding Federal components, such as water temperatures not exceeding 120 degrees. Additionally, you will see narrative citations for all deficiencies on those surveys where Conditions of Participation are found to be not met.

Administrator Qualifications

- ▶ At least 21 years of age.
- ▶ Responsible and accountable for implementation of policies established by the governing body.
- ▶ Has a minimum three years direct experience working in an ICF/ID setting.
- ▶ Meets other qualifications required by the facility's governing body.

Another change is to Administrator Qualifications. While the administrator is still required to be 21 years of age and be responsible and accountable for implementation of policies, there is an added requirement for the Administrator to have at least 3 years experience working directly in an ICF/ID setting.

Food Code

- ▶ Formal Food Code Inspection Report no longer required.
- ▶ Safe food storage, food handling, and meal services still required by:
 - Infection control
 - CoP for Dietetic Services
 - Stand alone State Rules for Purchasing and Storage of Food.

There has been a major change in relation to Food Code. Under the old rules, any facility over 10 licensed beds was required to have a food code inspection as part of the annual survey process. This requirement has been eliminated.

The facility is still responsible for ensuring appropriate food storage and handling practices are maintained, but issues that arise during survey would be cited under the appropriate areas of infection control, dietary services, stand alone state rules, etc., depending on the identified issue.

Chemicals

- ▶ No longer a State requirement to lock.
- ▶ If the facility chooses to lock chemicals, evidence of the following would need to be present:
 - Assessment for each individual impacted.
 - Documentation of less restrictive interventions tried.
 - Consent for locking of the chemicals.
 - Training programs to teach appropriate use and eliminate the need for locking.

Chemical storage has also changed. Previously it was required that all toxic chemicals be locked. That requirement is no longer in place. This does not mean a facility cannot lock toxic chemicals. However, in order to do so all steps required for any other restriction of an individual's rights would need to be followed:

- An assessment of the individual's ability/inability to safely use chemicals.
- Documentation of what less restrictive interventions had been tried and failed prior to locking.
- HRC approval for the locking, and Written Informed Consent signed by the guardian.
- Training programs designed to teach individuals to safely use chemicals that are needed in their environment to eliminate the need for the locks.

Please note, toxic chemicals are still required to be appropriately labeled, stored according to manufacturers instructions, and not stored in individual areas, with drugs, or in any area where food is stored, prepared, or served.

Vehicle Maintenance

▶ Vehicle Safety Policy

- Preventative Maintenance
- Inspection of safety hazards
- Inspection of lifts, securing devices
- Monitoring of policies including training

▶ Motor Vehicle Licensing

In addition to removing requirements such as Food Code and locking of chemicals, the new rules have added requirements related to vehicle maintenance and safety. This rule was added to ensure facilities develop and implement policies in relation to vehicle maintenance, cleaning, and safe use to ensure safety of the individuals served.

Clarification for Behavioral Intervention

- ▶ The application of painful or noxious stimuli and the use of enclosures are prohibited.

The final major changes is in relation to clarification of techniques to control behavior deemed to be maladaptive. While the Federal Regulations do allow for the use of painful or noxious stimuli as a form of behavior modification, along with the ability to utilize enclosures to confine individuals, State Law now prohibits the use of these techniques in the State of Idaho.

Questions?