



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
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March 19, 2026

TRANSMITTED VIA EMAIL

The Honorable Brian Lenney
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The Honorable Josh Keyser
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Re: Request for AG Analysis on Idaho Child Care Program Statutory Authority

Dear Senators Lenney and Keyser:

This letter responds to your March 12, 2026 inquiry regarding the legal authority of the Idaho Department of Health and Welfare (DHW) to continue operating the Idaho Child Care Program (ICCP).

QUESTION PRESENTED

Your primary question is:

Does DHW have statutory authority to continue operating ICCP under existing Idaho Code provisions, or does the program lack legal foundation as Director Charron's letter suggests?

SHORT ANSWER

It is our view that DHW has sufficient legal authority to continue operating ICCP. That authority comes from three sources: (1) the general rulemaking and public assistance authority in Idaho Code § 56-202, which encompasses ICCP under the statutory definitions of "public assistance" and "social services"; (2) the federal grant authority in Idaho Code §§ 56-203 and 56-1003; and (3) the Legislature's repeated annual appropriation of ICCP funds, which reflects affirmative and ongoing legislative endorsement of the program.

ANALYSIS

Director Charron’s March 9, 2026 letter to JFAC raised the concern that DHW lacks sufficient legal authority to continue administering ICCP. Specifically, the Director stated:

To date, the Idaho Child Care Program (ICCP) has been administered via administrative rules and budget intent language. . . . Further, DHW has determined that the authority in code we have historically relied upon for rulemaking is insufficient to sustain any of the ICCP rules. For years DHW has relied on general rulemaking authority vested in the Director at I.C. § 56-202, which states in relevant part that “[t]he director of the state department of health and welfare shall...[p]romulgate, adopt and enforce such rules and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code.” As the child care subsidy program is not found anywhere in Title 56, nor another title in Idaho Code, there is no authority to promulgate rules under this section. We can find no alternative rulemaking authority in law to sustain these rules.

* * *

The proposed bill, S1374, was printed last week and is being heard in Senate Health & Welfare this week. If this legislation or something substantially similar is not enacted this session, DHW will have no choice but to eliminate the rules and wind down ICCP by the close of the fiscal year, potentially earlier. This program cannot continue based on authority via budget intent language alone and as discussed above, we do not have the appropriate authority to promulgate rules.

For the reasons set out below, we respectfully disagree with the Director’s conclusion. When the relevant statutes are read in combination — and in light of the Legislature’s repeated appropriation of ICCP funds — DHW does have sufficient legal authority to continue operating the program.

Relevant Legal Background

DHW is an executive agency authorized by law. See Idaho Const., art. IV, § 20; Idaho Code §§ 67-2402, 56-1002, 67-2406. ICCP provides child care assistance to working families with children under age 13 (or older, if the child has a disability), paying a portion of child care costs on a sliding scale based on family size and income. IDAPA 16.06.12 is the administrative code chapter governing the ICCP program. IDAPA 16.06.12.000 identifies Idaho Code § 56-202 as the legal authority for the ICCP rules.

Idaho Code § 56-202 authorizes the DHW Director to “administer public assistance and social services” and to promulgate rules as may be necessary to carry out the provisions of Title 56. Idaho Code § 56-202(e) further authorizes DHW to “undertake other services for children

authorized by law.” DHW is also authorized to receive federal funding for public assistance. Idaho Code § 56-203.

Three Statutory Sources Support DHW’s Authority to Operate ICCP

A. ICCP Payments Fall Within the Statutory Definitions of “Public Assistance” and “Social Services”

The Director’s concern centers on whether ICCP falls within the scope of Title 56. We believe it does, based on the statute’s own definitions. Idaho Code § 56-202 authorizes the DHW Director to “administer public assistance and social services” and to promulgate rules as may be necessary to carry out the provisions of Title 56. Idaho Code § 56-201 defines the relevant terms as follows:

- (d) "Social services" means activities of the department in efforts to bring about economic, social and vocational adjustment of families and persons;
- (e) "Public assistance" includes general assistance, old-age assistance, aid to the blind, assistance to families with children, aid to the disabled, and medical assistance;

ICCP funds are paid directly to child care providers on behalf of eligible families. ICCP qualifies as a “social service” because it supports the economic and vocational adjustment of working families. ICCP qualifies as “public assistance” because it is assistance to families with children. These definitions provide a textual basis for treating ICCP as an authorized DHW program within Title 56.

B. DHW Director’s Federal Grant Authority

Separately, Idaho Code § 56-1003(4) authorizes the DHW Director, when designated by the Governor or through the standard legislative appropriations process, to “apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, or moneys made available through the federal government.” Idaho Code § 56-1004 provides additional broad authority along these lines. Because ICCP is substantially funded by federal dollars, this grant-acceptance and utilization authority provides a second, independent statutory basis for DHW’s operation of the program — one that does not depend on whether ICCP is expressly named in Title 56.

C. The Legislature’s Repeated Appropriation of ICCP Funds Confirms Legislative Approval

Appropriation bills are statutes, and they are not limited to the mere specification of dollar amounts — they may carry additional operative language reflecting legislative policy choices. The Idaho Supreme Court, in dictum, has recognized as much. *Cenarrusa v. Andrus*, 99 Idaho 404, 411–14, 582 P.2d 1082, 1089 (1978) (overruled on unrelated grounds by *Nate v. Denney*, 166 Idaho 801, 464 P.3d 287 (2017)).

The Legislature has enacted appropriation bills that specifically fund ICCP. For fiscal year 2026, that authority was reflected in S1108 and S1206, enacted during the 2025 legislative session. These repeated appropriations represent the Legislature's ongoing, affirmative approval of the program. Year after year, the Legislature has funded ICCP and thereby ratified DHW's operation of it.

CONCLUSION

For the foregoing reasons, it is our view that DHW has sufficient legal authority to continue operating ICCP.

We acknowledge that the Director and DHW would welcome and be benefited by greater statutory specificity; this would put this question fully to rest. If the Legislature wishes to provide that clarity — whether by enacting legislation specifically granting authority, or by making a policy decision to end the program — it is within the Legislature's power to do so. The most direct way to end the program, if that is the Legislature's intent, would be to discontinue appropriation funding for ICCP.

Regarding your legal question number 4, a full examination of the statutory authority underlying other federal welfare programs administered by DHW would require additional context and information from the agency. We are available to discuss those matters further with you and DHW at your convenience.

We hope this analysis is helpful. Please do not hesitate to reach out with further questions.

Sincerely,



PHIL N SKINNER
Chief Deputy

cc: Governor Brad Little
Rep. John Vander Woude, Chair, House Health and Welfare Comm.
Sen. Julie VanOrden, Chair, Senate Health and Welfare Comm.
Juliet Charron, Director, Idaho Dept. of Health & Welfare
Alex Adams, Assistant Secretary, U.S. Dept. of Health & Human Services