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**IDAPA 16
TITLE 05
CHAPTER 03**

**16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS
AND DECLARATORY RULINGS**

000. LEGAL AUTHORITY.

The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings pursuant to Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code. (3-30-01)

001. TITLE AND SCOPE.

01. Title. These rules are to be cited fully as Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (3-30-01)

02. Scope. These rules establish standards for petitions for rulemaking and declaratory rulings, and the conduct of contested cases. Contested cases include appeals from providers of medical assistance and other services, and appeals relating to individuals' benefits administered through the Division of Welfare, child support license suspension hearings, denial of a criminal history exemption, and tobacco citations pursuant to Sections 39-5705 and 39-5708, Idaho Code. (3-30-01)

002. WRITTEN INTERPRETATIONS.

There are none for this chapter of rules. (3-30-01)

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of this chapter. The Board of Health and Welfare and the Director of the Department of Health and Welfare find that the provisions of IDAPA 04.11.01.000, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable for contested cases involving the programs administered by the Department, because of the specific requirements of federal and state law regarding hearing processes, and the complexity of the rules at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (3-30-01)

004. INCORPORATION BY REFERENCE.

There are none in this chapter of rules. (3-30-01)

005. ADMINISTRATIVE PROCEDURES SECTION.

Petitions for adoption of rules, petitions for declaratory rulings, and appeals shall be filed with: Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036. Phone: (208) 334-5564. FAX: 332-7347. (3-30-01)

006. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

- 01. Appellant.** A person or entity who files an appeal of Department action or inaction. (3-30-01)
- 02. Board.** The Idaho Board of Health and Welfare. (3-30-01)
- 03. Department.** The Idaho Department of Health and Welfare. (3-30-01)
- 04. Director.** The Director of the Department of Health and Welfare. (3-30-01)
- 05. Hearing Officer.** The person designated to preside over a particular hearing and any related proceedings. (3-30-01)

- 06.** **IPV.** Intentional program violation. (3-30-01)
- 07.** **Intervenor.** Any person, other than an appellant or the Department, who requests to be admitted as a party in an appeal. (3-30-01)
- 08.** **Party.** An appellant, the Department and an intervenor, if intervention is permitted. (3-30-01)
- 011. -- 039.** **(RESERVED).**

040. PETITION FOR ADOPTION OF RULES.

Pursuant to Section 67-5230, Idaho Code, any person may file a written petition with the Administrative Procedures Section requesting the promulgation, amendment, or repeal of a rule. The petition shall include a name, address and phone number to which the Department may respond; list the rule in question and explain the reasons for the petition; and include the suggested language of the rule. The Director shall initiate rulemaking proceedings or deny the petition in writing within twenty-eight (28) days. (3-30-01)

041. -- 049. **(RESERVED).**

050. PETITION FOR DECLARATORY RULING.

Pursuant to Section 67-5232, Idaho Code, any person may file a written petition to the Director through the Administrative Procedures Section for a declaratory ruling as to the applicability of any statute or rule of the Department to an actual set of facts involving that person. (3-30-01)

051. CONTENTS OF PETITION FOR DECLARATORY RULING.

A petition for a declaratory ruling shall identify that it is a request for a declaratory ruling pursuant to this section; the specific statute, or rule with respect to which the declaratory ruling is requested; a complete description of the situation for which the declaratory ruling is requested; and the specific ruling requested. The petition shall include the date of the petition, the name, address and phone number of the petitioner and whether the petition is made on behalf of a corporation or organization. The petition shall identify the manner by which the statute or rule interferes with, impairs, or threatens to interfere with or impair the legal rights, duties, licenses, immunities, interests or privileges of the petitioner. (3-30-01)

052. DISPOSITION OF PETITION FOR DECLARATORY RULING.

The Director shall issue a final declaratory ruling in writing within seventy (70) days after receipt of the petition or within such additional time as may be required. The Director may decline to issue a declaratory ruling in the following circumstances: (3-30-01)

- 01.** **Incomplete.** When a petition fails to meet the requirements set forth in Section 051 of these rules; (3-30-01)
- 02.** **Contested Case.** When the issue set forth in the petition would be more properly addressed as a contested case, such as where there is a reasonable dispute as to the relevant facts, or where witness credibility is an issue; (3-30-01)
- 03.** **No Legal Interest.** When the petition fails to state a sufficient or cognizable legal interest to confer standing; (3-30-01)
- 04.** **Others Affected.** When the issue presented would substantially affect the legal rights, license, privileges, immunities, or interests of parties other than petitioners; or (3-30-01)
- 05.** **Beyond Authority.** When the ruling requested is beyond the authority of the Department. (3-30-01)

053. -- 099. **(RESERVED).**

100. DEPARTMENT RESPONSIBILITY.

When a decision is appealable, the Department shall advise the individual or provider in writing of the right and

method to appeal and the right to be represented. (3-30-01)

101. FILING OF APPEALS.

Appeals shall be filed in writing and shall state the appellant's name, address and phone number, and the remedy requested, except that appeals of action relating to Division of Welfare programs listed in Section 200 of these rules may be made verbally to Department Staff by an individual or representative. Appeals should be accompanied by a copy of the decision that is the subject of the appeal. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision shall have twenty-eight (28) days from the date of the decision is mailed to file an appeal. (3-30-01)

102. NOTICE OF HEARING.

All parties in an appeal shall be notified of a hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The hearing officer may provide a shorter advance notice upon request of a party or for good cause. The notice shall identify the time, place and nature of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of any statutes and rules involved; the issues involved; and the right to be represented. The notice shall identify how and when documents for the hearing will be provided to all parties. (3-30-01)

103. PREHEARING CONFERENCE.

The hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference to formulate or simplify the issues; obtain admissions or stipulations of fact and documents; identify whether there is any additional information that had not been presented to the Department with good cause; arrange for exchange of proposed exhibits or prepared expert testimony; limit the number of witnesses; determine the procedure at the hearing; and to determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)

104. SUBPOENAS.

At the request of a party, the hearing officer may issue subpoenas for witnesses or documents, consistent with Sections 120 and 134 of these rules. (3-30-01)

105. DISPOSITION OF CASE WITHOUT A HEARING.

Any contested case may be resolved without a hearing on the merits of the appeal by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, for lack of jurisdiction, or if an appeal is not filed within the time limits set forth in these rules. (3-30-01)

106. DEFAULT.

If a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer may enter a proposed default order against that party. The default order shall be set aside if, within fourteen (14) days of the date of mailing, the appellant submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. (3-30-01)

107. INTERVENTION.

Persons other than the original parties to an appeal who are directly and substantially affected by the proceeding may participate if they first secure an order from the hearing officer granting leave to intervene. The granting of leave to intervene shall not be construed to be a finding or determination that the intervenor is or may be a party aggrieved by any ruling, order or decision of the Department for purposes of judicial review. (3-30-01)

108. -- 119. (RESERVED).

120. DISCOVERY.

Except for hearings involving Section 56-1005(5), Idaho Code, prehearing discovery shall be limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The hearing officer may order production of this information if a party refuses to comply after receiving a written request. The hearing officer shall issue such other orders as are needed for the orderly conduct of the proceeding. Nothing in Section 120 shall limit the authority of the Director provided in Section 56-227C, Idaho Code. (3-30-01)

121. BRIEFING SCHEDULE.

A hearing officer may require briefs to be filed by the parties, and establish a reasonable briefing schedule. (3-30-01)

122. FILING OF DOCUMENTS IN AN APPEAL.

All documents intended to be used as exhibits shall be filed with the hearing officer. Such documents shall be provided to every party at the time they are filed with the hearing officer, in person or by first class mail. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties shall accompany all documents when they are filed with the hearing officer. (3-30-01)

123. REPRESENTATION.

Any party in a contested case proceeding may be represented by legal counsel, at the party's own expense. An individual in an appeal involving benefits may also be represented by a non-attorney. (3-30-01)

124. REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

Unless an individual, authorized representative or attorney provides a written declaration to the contrary, eligible individuals with developmental disabilities or mental illness shall be deemed to be represented by the state Protection and Advocacy System established pursuant to 42 USC 6041, et seq., and 42 USC 10801 et seq., and designated by the Governor. The protection and advocacy system shall have access to records of such individuals maintained by any program or institution of the Department if the individual is unable to authorize the system to have such access, or does not have a legal guardian, conservator or other legal representative. Service of documents shall be made on the protection and advocacy system and the individual. Unless the protection and advocacy system provides written notification to the Department that it will not be representing the individual, the system shall be an authorized representative. (3-30-01)

125. INTERPRETERS.

If necessary, an interpreter shall be provided by the Department. (3-30-01)

126. -- 129. (RESERVED).

130. OPEN HEARINGS.

All contested case hearings are open to the public, unless ordered closed in the discretion of the hearing officer due to the sensitive nature of the hearing. The hearing officer can order that individuals be identified by initials or an alias if necessary to protect their privacy. Witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. (3-30-01)

131. AUTHORITY OF HEARING OFFICER.

The hearing officer shall consider only information that was available to the Department at the time the decision was made. If appellant shows that there is additional relevant information that was not presented to the Department with good cause, the hearing officer shall remand the case to the Department for consideration. No hearing officer shall have the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. The hearing officer shall defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer shall not retain jurisdiction on any matter after it has been remanded to the Department. (3-30-01)

132. BURDEN OF PROOF - INDIVIDUAL BENEFIT CASES.

The Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification; revoke or limit a license; or to contest a tobacco violation pursuant to Sections 39-5705 and 39-5708, Idaho Code. The appellant has the burden of proof on all other issues, including establishing eligibility for a program, service or license; seeking an exemption required due to criminal history or abuse registry information; or seeking to avoid license suspension for failure to pay child support. (3-30-01)

133. BURDEN OF PROOF - PROVIDER CASES.

The Department has the burden of proof if the action being appealed is to revoke or limit a license, certification, or provider agreement; or to impose a penalty. The appellant has the burden of proof on all other issues, including establishing entitlement to payment. (3-30-01)

134. EVIDENCE.

Pursuant to Section 67-5251, Idaho Code, the hearing shall be informal and technical rules of evidence shall not apply, except that irrelevant, immaterial, incompetent, unduly repetitious evidence, evidence excludable on constitutional or statutory grounds, or evidence protected by legal privilege shall be excluded. Hearsay evidence shall be received if it is relevant to a matter in dispute and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs, or corroborates competent evidence. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Unless otherwise stated in statute, rule, or regulation, the evidentiary standard shall be proof by a preponderance of the evidence. (3-30-01)

135. DISCRETIONARY JUDICIAL NOTICE.

Notice may be taken of judicially cognizable facts by the hearing officer or authority on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (3-30-01)

136. MANDATORY JUDICIAL NOTICE.

01. Judicial Notice. The hearing officer shall take judicial notice, on its own motion or on the motion of any party, of the following materials: (3-30-01)

02. Admissible, Valid, And Enforceable Materials. The following are admissible, valid and enforceable: (3-30-01)

- a. Rules of the Department and other state agencies; (3-30-01)
- b. Federal regulations; (3-30-01)
- c. State plans of the Department; (3-30-01)
- d. The Constitutions and statutes of the United States and Idaho; (3-30-01)
- e. Public records; and (3-30-01)
- f. Such other materials that a court of law must judicially notice. (3-30-01)

137. HEARING RECORD.

The hearing officer shall arrange for a record to be made of a hearing. The hearing shall be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record shall be transcribed at the expense of the party requesting a transcript and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. The Department shall maintain the complete record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. (3-30-01)

138. DECISION AND ORDER.

A preliminary order shall be issued by the hearing officer not later than thirty (30) days after the case is submitted for decision. The order shall include specific findings on all major facts at issue; a reasoned statement in support of the decision; all other findings and recommendations of the hearing officer; a preliminary decision affirming, reversing or modifying the action or decision of the Department, or remanding the case for further proceedings; and the procedures and time limits for filing requests for review of the order. Unless otherwise provided by a statute governing a particular program, motions for reconsideration of a preliminary order shall not be accepted. (3-30-01)

139. -- 149. (RESERVED).

150. REVIEW OF PRELIMINARY ORDERS BY DEPARTMENT.

In cases under the jurisdiction of the Department, either party may file a request for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request shall identify all legal and factual bases of disagreement with the preliminary order. The Director or designee shall allow for briefing by the parties and shall determine whether oral argument will be allowed. The Director or designee shall determine whether a transcript of the hearing is needed and if so, one shall be provided by the party who requests review of the preliminary order. The Director or designee shall exercise all of the decision-making power he would have had if he had presided over the hearing. (3-30-01)

151. PETITION FOR REVIEW BY BOARD OF HEALTH AND WELFARE.

In cases under the jurisdiction of the Board, either party may file a petition for review with the Administrative Procedures Section not later than twenty-eight (28) days from the date the preliminary order was mailed. The Administrative Procedures Section shall establish a schedule for the submission of briefs and if allowed, oral argument. Appellant shall provide a transcript of the hearing before the hearing officer unless the appeal involves only questions of law. The Board shall exercise all of the decision-making power they would have had if they had presided over the hearing. (3-30-01)

152. FINAL ORDER.

The Board, Director or designee may affirm, modify, or reverse the order, or remand the matter to the hearing officer for further proceedings. The decision shall inform the parties of the procedure and time limits for filing appeals with the district court. Motions for reconsideration of a final order shall not be accepted. (3-30-01)

153. SERVICE OF PRELIMINARY AND FINAL ORDERS.

Orders shall be deemed to have been served when copies thereof are mailed to all parties of record or their attorneys. (3-30-01)

154. MAINTENANCE OF ORDERS.

All final orders of the Board or the Director shall be maintained by the Administrative Procedures Section and made available for public inspection for at least six (6) months, or until all appeals are concluded, whichever is later. (3-30-01)

155. EFFECT OF PETITION FOR JUDICIAL REVIEW.

The filing of a petition for judicial review shall not stay compliance with a final order or suspend the effectiveness of the order, unless otherwise ordered or mandated by law. (3-30-01)

156. -- 198. (RESERVED).

199. SPECIFIC CONTESTED CASE PROVISIONS.

The following sections set forth special requirements of various Department programs, which supersede the general provisions of these rules insofar as they are different or inconsistent. Sections 200 through 254 pertain to the programs in the Division of Welfare; Sections 300 and 301 pertain to the Division of Medicaid; and Sections 400 through 402 pertain to the Division of Health. (3-30-01)

200. DIVISION OF WELFARE APPEALS.

The provisions of this section of rules govern the conduct of individual benefit hearings to determine eligibility for benefits or services in the Division of Welfare, including IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho," IDAPA 16.03.04, "Rules Governing the Food Stamp Program in Idaho," IDAPA 16.06.12, "Rules Governing Idaho Child Care Program," IDAPA 16.04.14, "Rules Governing the Low Income Energy Assistance Program," IDAPA 16.04.02, "Idaho Telecommunication Service Assistance Program Rules," IDAPA 16.04.12, "Rules Governing Individual and Family Grant Programs," and IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children." (3-30-01)

201. TIME FOR FILING APPEAL.

A decision issued by the Department in a Division of Welfare program shall be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps shall have ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified

in the particular program within thirty (30) days after the action would have been taken if the Department had acted in a timely manner. (3-30-01)

202. INFORMAL CONFERENCE.

An appellant or representative has the right to request an informal conference with the Department or Community Action Agency before the hearing date. This conference may be used to resolve the issue informally or to provide the appellant with information about the hearing or actions. The conference will not affect the appellant's right to a hearing or the time limits for the hearing. After the conference, the hearing shall be held unless the appellant withdraws the appeal, or the Department withdraws the action contested by the appellant. (3-30-01)

203. WITHDRAWAL OF AN APPEAL.

An appellant or representative may withdraw an appeal upon written request to the hearing officer. (3-30-01)

204. TIME LIMITS FOR COMPLETING HEARINGS.

The Department shall conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing shall be held within thirty (30) days from the date the hearing request is received. The Department shall expedite hearing requests from appellants such as migrant farm workers who are planning to move before the hearing decision would normally be reached. (3-30-01)

205. APPEAL OF AUTOMATIC ADJUSTMENTS.

An appeal shall be dismissed if the hearing officer determines that the sole issue is an automatic grant adjustment, change in rule that affects benefit amount or eligibility, or reduction of Medicaid services under state or federal law. (3-30-01)

206. CONSOLIDATED HEARING.

When there are multiple appeals or a group appeal involving same change in law, rules, or policy, the hearing officer shall hold a consolidated hearing. (3-30-01)

207. POSTPONEMENT OF FOOD STAMP HEARINGS.

An appellant may request, and shall be granted a postponement of a hearing, not to exceed thirty (30) days. The time limit for the Department's response shall be extended for as many days as the hearing is postponed. (3-30-01)

208. -- 249. (RESERVED).

250. FOOD STAMPS DISQUALIFICATION HEARINGS.

A disqualification hearing shall be scheduled when the Department has evidence that an individual has allegedly committed one (1) or more acts of intentional program violations (IPV). (3-30-01)

251. COMBINING DISQUALIFICATION HEARING AND BENEFIT HEARING.

The hearing officer shall consolidate a hearing regarding benefits or overpayment and a disqualification hearing if the issues are the same or related. The appellant shall be notified that the hearings will be combined. (3-30-01)

252. RIGHT NOT TO TESTIFY.

The hearing officer shall advise the appellant that he may refuse to answer questions during a disqualification hearing. (3-30-01)

253. FAILURE TO APPEAR.

If an appellant or representative fails to appear at a disqualification hearing or cannot be located, the hearing shall be conducted in his absence. The Department shall present proof that advance notice of the hearing was mailed to the appellant's last known address. The hearing officer shall consider the evidence and determine if an IPV occurred based solely on the information provided by the Department. The appellant has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. If an IPV had been established, but the hearing officer determines the appellant had good cause for not appearing, the previous decision shall be void and a new hearing shall be conducted. The previous hearing officer may conduct the new hearing. (3-30-01)

254. STANDARD FOR DETERMINING INTENTIONAL PROGRAM VIOLATIONS.

The determination that an intentional program violation has been committed shall be established by clear and convincing evidence that the appellant committed or intended to commit an IPV. (3-30-01)

255. -- 299. (RESERVED).

300. DIVISION OF MEDICAID - REQUEST FOR ADMINISTRATIVE REVIEW.

An action relating to licensure or certification, billing or reimbursement shall be final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request shall be signed by the licensed administrator of the facility or by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties shall clarify and attempt to resolve the issues at the review conference. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. A written decision by the Department shall be furnished to the facility or provider. (3-30-01)

301. SCOPE OF HEARING.

If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review shall be admissible in the appeal hearing. (3-30-01)

302. -- 399. (RESERVED).

400. DIVISION OF HEALTH -- LABORATORIES.

A notice of grounds for denial, suspension, revocation or renewal shall become final and effective unless the applicant or responsible party files a written appeal by registered or certified mail within fourteen (14) days of receipt of the notice. A hearing shall be held not more than twenty-eight (28) days from receipt of the appeal. The applicant or responsible person shall receive at least fourteen (14) days of notice of the hearing date. If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered. (3-30-01)

401. REPORTABLE DISEASES.

An order or restriction as specified in IDAPA 16.02.10, Subsections 015.05 through 015.10, "Idaho Reportable Diseases," shall become final and effective unless an appeal is filed within five (5) working days after the effective date of the order or restriction. (3-30-01)

01. Conduct Of Hearing. The Department may take whatever precautions and make whatever arrangements are necessary for the conduct of such hearing to insure that the health of participants and the public is not jeopardized. (3-30-01)

02. Review. Any person directly affected by an order or restriction may file exceptions to the Director's determination, which shall be reviewed by the Board. The order or restriction shall remain effective unless rescinded by the Board. (3-30-01)

402. FOOD ESTABLISHMENTS.

A notice of action or intended action to deny, suspend, revoke, or fail to renew a license shall become final and effective unless an appeal is filed with the appropriate health district by the applicant or license holder within fourteen (14) days of receipt of the notice. The health district shall conduct an administrative review and issue a decision, which shall become final and effective unless an appeal is filed with the Department within fourteen (14) days. If an appeal is received timely, a hearing shall be scheduled and a decision issued within twenty-one (21) days of receipt of the appeal. (3-30-01)

403. -- 999. (RESERVED).

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