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**IDAPA 21
TITLE 01
CHAPTER 01**

IDAPA 21 – DIVISION OF VETERANS SERVICES

**21.01.01 – RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE
CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF
VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

000. LEGAL AUTHORITY.

The Administrator of the Division of Veterans Services with the advice of the Veterans Affairs Commission is authorized by the Idaho Legislature to establish rules governing requirements for admission to Idaho State Veterans Homes and to establish rules governing charges for residency, pursuant to Sections 65-202, 65-204 and 66-907, Idaho Code. (3-30-01)

001. TITLE AND SCOPE.

01. Title. These Rules are titled IDAPA 21.01.01, “Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.” (3-30-01)

02. Scope. These rules contain provisions for determining eligibility for admission and for establishing charges for residency in Idaho State Veterans Homes, together with rules of administrative procedure before the Idaho Veterans Affairs Commission. (3-30-01)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of these rules, or to compliance with these rules. Any such documents are available for public inspection and copying at cost at the Idaho Division of Veterans Services office. (3-30-07)

003. ADMINISTRATIVE APPEALS.

Administrative procedure and appeals pursuant to this Chapter are governed by Section 982, et seq., of these rules. (3-30-01)

004. INCORPORATION BY REFERENCE.

IDAPA 21.01.01, “Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure,” incorporates by reference 5 U.S.C. Section 2108(1) (January 6, 2006). Electronic copies are available at uscode.house.gov/uscaddr.htm. Printed copies are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. (4-2-08)

005. POLICY.

Through the facilities and services available at Idaho State Veterans Homes, the Division of Veterans Services will provide necessary care for honorably discharged eligible veterans. No applicant will be denied admission on the basis of sex, race, color, age, political or religious opinion or affiliation, national origin, or lack of income, nor will any care or other benefit at a Home be provided in a manner, place, or quality different than that provided for other residents with comparable disabilities and circumstances. However, if residents are financially able to do so, they must contribute to the cost of their care, with allowances made for retention of funds for their personal needs. (3-30-01)

006. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Office of the Idaho Division of Veterans Services is in Boise, Idaho. The office is located at 351 Collins Road, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: 351 Collins Road, Boise, Idaho 83702. The telephone number of the office is (208) 780-1300. The facsimile number of the office is (208) 780-1301. (3-15-02)

007. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-15-02)

008. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of the rules contained in this Chapter, the following terms are used as defined: (3-15-02)

01. Applicant. A person who has expressed interest in applying for residency in an Idaho State Veterans Home. (3-30-01)

02. Asset. Real or personal property that is owned in whole or in part by an applicant or resident, including stocks, bonds, goods, rights of action, evidences of debt, and cash or money that is not income. Insurance payments or monetary compensation for loss of or damage to an asset is an asset. Income not expended in the calendar month received is an asset beginning on the first day of the next calendar month. (4-2-08)

03. Bona Fide Resident. A person who maintains a principal or primary home or place of abode in the state of Idaho coupled with the present intent to remain at that home or abode and return to it after any period of absence pursuant to Section 66-901, Idaho Code. (3-30-01)

04. Commission. The Idaho Veterans Affairs Commission. (3-30-01)

05. County Service Officer. A person appointed by the county to provide assistance to veterans in accordance with Section 65-601, Idaho Code. (3-30-01)

06. Division. Division of Veterans Services in the Idaho Department of Self Governing Agencies. (3-30-01)

07. Division Administrator. The Administrator of the Division of Veterans Services in the Department of Self Governing Agencies, or his designee. The chief officer of the Division of Veterans Services. (3-30-01)

08. Home Administrator. Administrator of an Idaho State Veterans Home. The chief officer of each respective Veterans Home. (3-30-01)

09. Home. An Idaho State Veterans Home. (3-30-01)

10. Idaho State Veterans Home. Pursuant to Section 66-901, Idaho Code, a Home for eligible veterans. (3-30-01)

11. Income. Money received from any source including wages, tips, commissions, private pension and retirement payments, social security benefits, unemployment compensation, veterans assistance benefits, and gifts. (4-2-08)

12. Legal Dependents. The mother, father, spouse, or minor children of an applicant or a resident who, by reason of insufficient financial resources, or non-minor children who because of disease, handicap or disability, must have financial support from the applicant or resident in order to maintain themselves. (3-30-07)

13. Liquid Assets. Those assets which are cash or can be liquidated for cash within a reasonable period of time including, but not limited to, money market certificates, certificates of deposit, stocks and bonds, and some tax shelter investments. (4-2-08)

14. Maintenance Charge. A charge made for care and residence at an Idaho State Veterans Home, based upon the current established rate. (3-30-01)

15. Net Income. That income used to compute charges after allowable deductions have been made. (3-30-01)

16. Resident. A person who is a resident of an Idaho State Veterans Home. (3-30-07)

17. **Spouse.** The husband or wife, under a marriage recognized by Title 32, Idaho Code, of a veteran or the widow or widower of a veteran under a marriage recognized by Title 32, Idaho Code. (3-30-07)

18. **VA.** United States Department of Veterans Affairs. (3-30-01)

19. **Veteran.** Shall have the meaning established in Section 65-203, Idaho Code. The separation or discharge considered under this definition shall mean the conditions of the most recent separation or discharge from military service. (4-2-08)

011. -- 049. (RESERVED)

050. ADMINISTRATIVE POWERS.

The Home Administrator has full authority in the management of a Home, subject to review by the Division Administrator and Commission. A Home Administrator can, in the execution of his duties, delegate certain responsibilities to his staff. When requested by the Division Administrator, the Home Administrator will attend regular and special meetings of the Commission. (3-30-01)

01. **Representative Powers.** The Division Administrator is authorized to represent the Commission in all official transactions between the Homes and other departments of Idaho state government. (3-30-01)

02. **Investigation Powers.** Upon receipt of an application for residency and for the duration of residency of any resident, the Division is authorized to conduct an investigation to determine the total value of the property and assets of the applicant/resident to determine his ability to pay maintenance charges established in this Chapter pursuant to Section 66-907, Idaho Code. (3-30-01)

03. **Inspection Powers.** Inspection of the rooms and facilities of a Home, as well as of the dress and appearance of all residents, can be conducted at any time by the Home Administrator. (3-30-01)

04. **Emergency Powers.** In an emergency, the Home Administrator is authorized to use his judgment in matters not specifically covered by a statute, order, rule, or policy. (3-30-01)

051. -- 074. (RESERVED)

075. ADMINISTRATIVE DUTIES.

The Home Administrator will enforce all orders and rules and implement all policies of the Division in the administration of a Home. (3-30-01)

01. **Management of Records.** The Home Administrator must maintain accurate fiscal and resident records. (3-30-01)

a. Nursing care records. Records relating to each nursing care resident of a Home will be kept in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities in Idaho." (3-30-01)

b. Residential care records. Records relating to each residential care resident of a Home will be kept in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.03.22, "Rules for Residential and Assisted Living Facilities in Idaho." (3-30-01)

c. Domiciliary care records. Records relating to each domiciliary care resident of a Home will include: (3-30-01)

i. Date of admission; (3-30-01)

ii. Period of residency; (3-30-01)

iii. Age; (3-30-01)

- iv. Residence; (3-30-01)
 - v. Military organization in which the veteran served; (3-30-01)
 - vi. Evidence of other eligibility requirements; (3-30-01)
 - vii. “Acknowledgment of Conditions Leading to Discharge” form; and (3-30-01)
 - viii. “Residents Bill of Rights” form. (3-30-01)
 - d. Fiscal records. The Home Administrator must account for Home funds expended on behalf of designated residents or for the benefit of the Home. (3-30-01)
- 02. Response to Complaints.** The Home Administrator will respond in writing to any written and signed complaint made by a resident pursuant to Section 300 of these rules. (3-30-01)
- 076. -- 099. (RESERVED)**
- 100. ELIGIBILITY REQUIREMENTS.**
Applicants and residents must satisfy the following requirements: (3-30-07)
- 01. Veterans or Eligible Spouse.** (3-30-07)
 - a. Nursing Care. Applicants for and residents of nursing care must be a veteran or the spouse of a veteran who is eligible for admission to a Home. The death of a veteran shall not disqualify a resident spouse if the veteran was eligible for admission to a Home at the time of death. (3-30-07)
 - b. Residential Care and Domiciliary Care. Applicants for and residents of residential care and domiciliary care must be a veteran. A Home will not grant spouses admission for residential care or domiciliary care. (3-30-07)
 - 02. Idaho Residency.** The applicant must be a bona fide resident of the state of Idaho at the time of admission to a Home. (3-30-01)
 - 03. Incompetent Applicants.** Applicants and residents who are incompetent must provide copies of a legally sufficient guardianship or power of attorney. (3-30-07)
 - 04. Necessity of Required Services.** Applicants and residents must meet the requirements for the level of care for which they apply or are receiving. At the request of the Home, residents must provide recertification of their need for services from a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. (3-30-07)
 - a. Nursing Care. To be eligible to receive nursing care in a Home, applicants must be referred by a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. (3-30-01)
 - b. Residential Care. Each applicant must submit to a physical examination performed by a licensed physician and meet the physical limitation requirements for residential care. Applicants and residents must be unable to earn a living and have no adequate means of support due to wounds, old age, or physical or mental disabilities. However, each residential care resident must ambulate independently or with the aid of a wheelchair, walker, or similar device and be capable of performing at the time of admission, and for the duration of his residency, all of the following with minimal assistance: (3-30-07)
 - i. Making his bed daily; (3-30-01)
 - ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)

- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)
- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)
- x. Making rational decisions as to his desire to remain or leave the Home. (3-30-01)

c. Domiciliary Care. Each applicant must submit to a physical examination performed by a licensed physician and meet the physical limitation requirements for domiciliary care. Applicants and residents must be unable to earn a living and have no adequate means of support due to wounds, old age, or physical or mental disabilities. However, each domiciliary care resident must be able to ambulate independently and must be capable of performing at the time of admission, and for the duration of his residency, all of the following without assistance: (3-30-07)

- i. Making his bed daily; (3-30-01)
- ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)
- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)
- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)
- x. Making rational and competent decisions as to his desire to remain or leave the Home. (3-30-01)

05. Placement Restriction. A Home shall not accept applicants or continue to extend care to residents for whom the facility does not have the capability or services to provide an appropriate level of care. (3-30-01)

06. Financial Statement. Each applicant must file a signed, dated statement with the Home Administrator containing a report of income from all sources and a report of all liquid assets which will be used to determine the amount of the maintenance charge which is required in accordance with Section 66-907, Idaho Code, and IDAPA 21.01.01, "Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure." (3-30-01)

07. Social Security Benefits. If eligible for Social Security benefits, the applicants and residents and their spouses must apply for those benefits unless waived by the Home Administrator. (3-30-07)

08. Medicare Coverage. If eligible for Medicare, the applicants and residents must elect to participate, unless participation is waived by the Home Administrator. (3-30-07)

09. Income Limitation. (3-30-01)

a. Nursing Care. None. (3-30-01)

b. Residential and Domiciliary Care. An applicant whose total monthly net income, at the time of his application for residency, exceeds the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12) cannot be admitted unless granted a waiver by the Home Administrator. This waiver must include a statement from a VA Medical Center physician indicating the veteran is in “need of continuing medical care.” (3-30-01)

10. VA Pension -- Nursing Care. Unless waived by the Home Administrator, a wartime veteran, as defined in 5 U.S.C. Section 2108, who is a nursing care applicant or resident must be eligible for, apply for, or be in receipt of a VA disability pension in accordance with Public Law 95588. Such waivers may be considered only when the applicant or resident has signed a statement that he is able to defray the necessary expenses of the medical care for which he is applying or receiving and arrangements are made to secure medical services not provided by the VA. (3-30-07)

11. Agreements for Behavior and Care Needs. The Homes may require that applicants or residents enter into agreements concerning the applicant or resident’s behavior or care needs while residing in the Home. The resident’s failure to perform these agreements is a basis for discharge from the Home. (3-15-02)

12. Limit on Admission of Spouses. Unless waived in writing by the Division Administrator, a Home shall not accept spouses for admission if the Home’s residency is at ninety-five percent (95%) or more of capacity. Homes shall not admit a spouse if the number of spouses residing in the home will exceed twenty-five percent (25%) of the residents of the Home following admission of the applicant. (3-30-07)

101. -- 149. (RESERVED)

150. APPLICATION PROCEDURE.

01. Availability of Application Forms. Forms to apply for residence in a Home are available: (3-30-01)

a. From any Home; (3-30-01)

b. From any county service officer; or (3-30-01)

c. From any active post or barracks service officer of veterans organizations. (3-30-01)

02. Submission of Application. An application may be submitted to the administrative offices of a Home. (3-30-01)

03. Application Processing. Completed applications will be processed no later than three (3) working days from receipt. (3-30-01)

04. Waiting List. An applicant who is approved for admission for whom a vacancy does not exist will be placed on a waiting list and accepted on a first come, first served basis dependent on the Home's ability to provide a level of care consistent with the needs of the applicant. The Home Administrator may award “priority status” to prospective Home residents resulting in their names being placed near the top of the Home waiting list, provided they have completed all preadmission requirements and meet one (1) or more of the following criteria: (3-30-07)

a. Veterans who served during any war or conflict officially engaged in by the government of the United States. (3-30-01)

b. Previous residents of Homes who have been discharged for therapeutic treatment or to live in a lesser level of care or in an independent setting and whose discharge plan indicates a readmission priority. (3-30-01)

c. Current Home residents who demonstrate a need for a level of care provided by a Home and who would benefit from maintaining a stable environment. (3-30-01)

d. Receive special consideration as per the request of the medical director because of his desire to provide a very specific continuum of care. (3-30-01)

05. Provision If Application Rejected. An applicant whose application has been rejected and who feels he meets the eligibility requirements can request a hearing in accordance with the procedures specified in Section 982, et seq., of these rules. (3-30-01)

151. -- 199. (RESERVED)

200. CONDITIONS FOR ADMISSION.

01. Denial of Admission. Admission may be denied to an otherwise eligible applicant for any reason for which an admitted resident could be involuntarily discharged. (3-30-01)

02. Assignment of Personal Property. Prior to admission to a Home, an eligible applicant must agree that while he is a resident of a Home he will assign the following, under the conditions specified: (3-30-01)

a. Pursuant to Section 66-906, Idaho Code, all personal property owned, money held, or assets to which he is entitled at the time of his death -- unless disposed of by will or rightfully claimed within five (5) years of the death of the resident by an heir or person named in the resident's will -- must be assigned to the Division Administrator at the time of application for the sole use and benefit of a Home. (3-30-01)

b. Upon discharge or voluntary departure from a Home, and after written notification is sent to the resident, all personal property owned or money deposited with the Home which is unclaimed by the former resident will be converted for the sole use and benefit of a Home as specified below: (3-30-01)

i. Personal property unclaimed within thirty (30) days of departure or discharge will be made available to needy Home residents or disposed of at public auction or private sale and the proceeds deposited with the state; or (3-30-01)

ii. Money deposited with the Home will be retained and deposited with the state; however, said money may be claimed by the former resident within five (5) years of departure or discharge. (3-30-01)

201. WEAPONS.

Weapons including, but not limited to, firearms, ammunition, straight razors, and knives are not allowed. (4-11-06)

202. ACKNOWLEDGMENT OF CONDITIONS LEADING TO DISCHARGE.

Upon admission to a Home, each resident will be advised in writing of the conditions under which immediate discharge will occur, as specified in Section 350 of these rules. Each resident must acknowledge receipt of this information by signature, and that acknowledgment will be a permanent part of each resident's file. (5-8-09)

203. -- 299. (RESERVED)

300. CONDUCT OF RESIDENTS.

Each resident must comply with applicable rules in this Chapter and with any order or directive of the Home Administrator. All complaints made by the residents concerning food, quarters, ill treatment, neglect, abusive language, or other violations of any rule or standard applicable to the Home, or complaints against the operation of a Home may be made either verbally or in writing to the Home Administrator. (3-30-01)

01. No Operation of Motor Vehicles by Nursing Care Residents. The operation or storage of privately owned motor vehicles by nursing care residents is prohibited on Home property. (3-20-04)

- 02. Operation of Motor Vehicles by Domiciliary and Residential Care Residents.** Each authorized domiciliary and residential care resident who drives a motor vehicle onto the grounds of a Home must adhere to the following: (3-20-04)
- a. Requirements:** (3-30-01)
 - i. Must possess a valid driver's license; (3-30-01)
 - ii. Vehicle must have a current motor vehicle registration; (3-30-01)
 - iii. Operator must be insured against liability and property damage in accordance with Idaho law; and (3-30-01)
 - iv. Must park only in assigned spaces. (3-30-01)
 - b. Prohibitions.** Nonoperable motor vehicles and motor vehicle repairs are not permitted on the grounds of a Home. (3-30-01)
- 03. Housekeeping.** (3-30-01)
- a.** Housekeeping services for nursing care residents shall be provided by the Home. (3-30-01)
 - b.** Each residential and domiciliary care resident must adhere to the following requirements (residential care residents may need minimal assistance): (3-30-01)
 - i. Making his bed daily; (3-30-01)
 - ii. Maintaining his room in a neat and orderly manner at all times; and (3-30-01)
 - iii. Assuring that all clothing is appropriately marked, stored and kept clean through proper laundering. (3-30-01)
 - c.** All residents are prohibited from: (3-30-01)
 - i. Washing clothes or other articles which present a health or safety hazard in resident rooms or bathrooms; (3-30-01)
 - ii. Using electrical devices, including televisions, radios, recorders, and shavers, until they have been certified by Home maintenance staff as being safe for use; (3-30-01)
 - iii. Entering the kitchen, laundry, shop or mechanical spaces without permission; and (3-30-01)
 - iv. Interfering or tampering with the heating, refrigeration or air conditioning systems, televisions, lighting, appliances, plumbing, or mechanical equipment at the Home without authorization. (3-30-01)
- 04. Personal Conduct.** Each resident must adhere to the following: (3-30-01)
- a. Requirements:** (3-30-01)
 - i. Observing cleanliness in person, dress and in living habits; (3-30-01)
 - ii. Bathing or showering frequently; (3-30-01)
 - iii. Observing the smoking policies of a Home; and (3-30-01)

- iv. Residential and domiciliary care residents must retire to a recreation area or utilize an individual bed light if desiring to read between 10 p.m. and 6:30 a.m. during which time all room overhead lights are turned off. (3-30-01)
- b. Prohibitions:** (3-30-01)
 - i. Creating a disturbance or using intoxicating beverages or nonprescribed controlled substances in the buildings or on the grounds (unless prescribed by a physician); (3-30-01)
 - ii. Marking or writing on the walls of a building, or damaging the grounds or any other property; (3-30-01)
 - iii. Using profanity or exhibiting vulgar behavior in the Home or in any other public place; (3-30-01)
 - iv. Becoming involved in quarrels, persistent dissension or criticism of others; (3-30-01)
 - v. Lending money to, or borrowing money from, another resident or an employee of the Home; (3-30-01)
 - vi. Smoking in an unauthorized area; (3-30-01)
 - vii. Taking food (other than fresh fruit for consumption within a reasonable time period), condiments, dishes or utensils from the dining room; (3-30-01)
 - viii. Cooking or using heating devices in residents' rooms or other unauthorized areas; and (3-30-01)
 - ix. Storing flammable or combustible material including, but not limited to, gasoline, butane, solvents, and acetone on Home grounds. (3-30-01)

301. -- 349. (RESERVED)

350. TRANSFER AND DISCHARGE OF RESIDENTS.

A resident can be transferred or discharged, for a period to be determined by the Home Administrator, for the bases set forth in Section 350 of these rules. The Home Administrator will provide notice of transfer or discharge and the opportunity to appeal a transfer or discharge in accordance with Section 980 of these rules. (5-8-09)

01. Emergency Discharge or Transfer. Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged or transferred. (5-8-09)

02. General Discharge or Transfer. If the Home Administrator determines that one (1) or more of the following is present or has occurred, the resident may be discharged or transferred from the Home: (5-8-09)

- a.** Possession of a lethal weapon of any kind by the resident on Division property; possession of wine, beer, or liquor by the resident on Division property; or possession of a controlled substance or medication by the resident, unless prescribed by the resident's physician; (4-2-08)
- b.** The resident's excessive or habitual intoxication; (4-2-08)
- c.** Disruption of the peace of the Home by the resident; (4-2-08)
- d.** The resident strikes or threatens harm to another person; (4-2-08)
- e.** The resident willfully destroys or wrongfully appropriates state or another person's property; (4-2-08)
- f.** The resident commits a felony; (4-2-08)

- g.** The resident uses abusive language or gestures or intentionally commits assault or battery; (4-2-08)
- h.** The resident fails to comply with the rules of this Chapter or a written directive of the Home Administrator or the Division Administrator; (4-2-08)
- i.** The financial conditions set forth in Section 950 of these rules are present; (4-2-08)
- j.** The resident engages in a pattern of behavior that infringes upon the rights of another person; (4-2-08)
- k.** The resident has unauthorized absences from the Home in excess of those permitted by Section 352 of these rules; (4-2-08)
- l.** Continued residency at the Home by the resident presents a danger to the resident or other persons; (4-2-08)
- m.** The resident is required by law to register as a sex offender and the Home has determined that the Home must provide resources in excess of those provided to other residents to ensure the safety of the resident or other persons; (4-2-08)
- n.** The resident does not meet the requirements and limitations set forth in Section 100 of these rules. (4-2-08)
- 03. Discharge or Transfer During Absence.** A resident who is absent from the Home may be discharged or transferred due to one (1) or more of the following: (5-8-09)
- a.** The Home will not have the capability or services to provide an appropriate level of care to the resident upon the resident's return to the Home; (5-8-09)
- b.** The resident has not returned to the Home from an absence prior to the expiration of the bed hold period established by a third party payer paying more than half of the resident's maintenance charges; (5-8-09)
- c.** The resident ceases to pay the resident's maintenance charges or a bed hold charge applicable to an absence. (5-8-09)
- 04. Voluntary Transfer or Discharge.** A resident may be transferred or discharged at any time upon voluntary consent of the resident. (5-8-09)
- 351. (RESERVED)**
- 352. UNAUTHORIZED ABSENCES -- RESIDENTIAL AND DOMICILIARY CARE.**
- 01. Unauthorized Absences Prohibited.** For residential and domiciliary care residents, no more than three (3) unauthorized absences may be accumulated in a thirty (30) day period. If more than three (3) unauthorized absences are accumulated, the resident may be discharged for a period of thirty (30) days. (5-8-09)
- 02. Yearly Maximum.** The maximum number of unauthorized absences allowable in a one (1) year period is twelve (12). Any resident who exceeds twelve (12) unauthorized absences in one (1) year may be discharged for a period of up to one (1) year. (5-8-09)
- 03. Readmission Requirements.** Residents discharged for unauthorized absences must reapply for admission and are subject to the same restrictions and conditions as other applicants. (5-8-09)
- 353. -- 850. (RESERVED)**
- 851. AVAILABLE SERVICES.**
The Division will make available the following services. (3-15-02)

01. **Nursing Care.** The Division will make available the services listed below for nursing care residents: (3-15-02)
- a. Barber/Beauty Shop. (3-30-01)
 - b. Chaplain. (3-30-01)
 - c. Dental Hygiene. (3-30-01)
 - d. Dietary. (3-15-02)
 - e. Lab. (3-30-01)
 - f. Laundry. (3-30-01)
 - g. Nursing. (3-30-01)
 - h. Pharmaceutical. (3-30-01)
 - i. Physical Therapy. (3-30-01)
 - j. Physician. (3-30-01)
 - k. Referral. (3-30-01)
 - l. Social Work. (3-30-01)
 - m. Speech Therapy. (3-30-01)
 - n. Therapeutic Recreation. (3-30-01)
 - o. Limited Transportation. (3-15-02)
 - p. X-Ray. (3-30-01)
02. **Residential and Domiciliary Care.** The Division will make available the services listed below for residential and domiciliary care residents: (3-15-02)
- a. Barber/Beauty Shop. (3-30-01)
 - b. Chaplain. (3-30-01)
 - c. Dietary. (3-15-02)
 - d. Laundry. (3-30-01)
 - e. Nursing (limited). (3-30-01)
 - f. Referral. (3-30-01)
 - g. Social Work. (3-30-01)
 - h. Therapeutic Recreation. (3-30-01)
 - i. Limited Transportation. (3-15-02)

852. -- 879. (RESERVED)

880. FINANCIAL CONDITION OF APPLICANTS/RESIDENTS.

Each applicant/resident or his legal representative must submit a signed and dated financial statement to the Home Administrator on which his income and liquid assets from all sources are reported. The statement must also indicate whether the applicant/resident is responsible for the support of any legal dependent who should be considered in fixing the amount of monthly charges. If changes occur in the applicant's/resident's income or liquid assets, it shall be the applicant's/resident's responsibility to submit an accurate financial statement immediately. (3-30-01)

01. Investigation of Financial Condition. The Division is authorized to investigate the financial condition of applicants/residents to determine their ability to pay maintenance charges. An applicant/resident may be required to provide a power of attorney or a release of information to the Home Administrator in order to assist in investigating his financial condition and to aid in securing any benefits for which he may be eligible. (3-30-01)

02. Retroactive Income. In the event an applicant/resident is awarded retroactive income from any source, he is responsible to report this award to the Home Administrator. He is then required to pay his maintenance charge retroactive to the effective date of income. (3-30-01)

881. -- 914. (RESERVED)

915. MAINTENANCE CHARGES.

Upon becoming a resident of a Home, each resident is liable for the payment of a maintenance charge as well as expenses for supplies, medication, equipment, and services (other than basic services for the assigned level of care) that are not provided or paid for by VA, Medicaid, Medicare, or other insurance unless otherwise determined by the Home Administrator. Residents living in a Home for any part of a month must pay for each day, based on the actual number of days in the month, at that fraction of their total charge. Refusal or failure to pay the established maintenance charge or related expenses is cause for discharge from the Home. (3-30-01)

01. Charges. Charges will be computed, based on the following factors: (3-30-01)

a. If the resident has an income, those items used to compute the charge will include: (3-30-01)

i. Social Security benefits; (3-30-01)

ii. Retirement benefits; (3-30-01)

iii. Income from annuities; (3-30-01)

iv. Insurance benefits; (3-30-01)

v. Rental from property; (3-30-01)

vi. Farm income; (3-30-01)

vii. VA pensions or compensations; (3-30-01)

viii. Tax refunds; and (3-30-01)

ix. Income from any and all other sources. (3-30-01)

b. If the resident is single, incompetent, and has liquid assets in excess of one thousand five hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than one thousand five hundred dollars (\$1,500). (3-15-02)

c. If the resident is single, competent, and has liquid assets in excess of fifteen hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than fifteen hundred dollars (\$1,500). (3-30-01)

d. Joint income will be used in computing charges for married persons. If the resident has dependents who rely upon him for financial support, the amount of liquid assets will not be drawn upon after they have declined to a level of five thousand dollars (\$5,000). (3-30-01)

02. Exclusions from Income or Payment. The only exclusions in computing monthly charges will be: (3-30-01)

a. Those funds which a resident receives from the sale of hobby/craft items constructed and sold as part of a Home occupational therapy program; or (3-30-01)

b. Those unusual expenses specified below, which are incurred after the resident's admission to a Home and are approved by the Home Administrator, up to a maximum monthly allowance which is established pursuant to Section 916 of these rules: (3-30-01)

i. Prosthetic, orthopedic, and paraplegic appliances; (3-30-01)

ii. Sensory aids; (3-30-01)

iii. Wheelchairs; (3-30-01)

iv. Therapy services; (3-30-01)

v. Hospital, medical, surgical expenses and bills for prescription drugs incurred and paid by the individual in the current month and documented by a paid receipt. (3-30-01)

c. Reasonable medical insurance premiums, as paid, with documentation of payment. Other insurance premiums are excluded from consideration; or (3-30-01)

d. An allowance established pursuant to Section 916 of these rules for retention by a resident for personal needs; (3-30-01)

e. That amount necessary for a resident of a Home to contribute to the support of a legal dependent where proof of actual payment is documented. A monthly allowance will be established for a spouse or additional dependents pursuant to Section 916 of these rules. (These allowances take into consideration housing and utility costs.) (3-30-01)

03. Income Eligibility Limits. (3-30-01)

a. Nursing Care. None. (3-30-01)

b. Residential and Domiciliary Care. A resident's total monthly net income, from all sources, may not exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) unless waived by the Home Administrator in accordance with Subsection 100.08 of these rules. (3-30-01)

c. While in residence at a Home, a domiciliary resident may seek outside employment and receive income so that his total monthly net income from all sources will exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) for a one-month transitional period. At the end of this one-month transitional period, the resident will be discharged. (3-30-01)

04. Continued Eligibility. (3-30-01)

a. Nursing Care. A resident may continue to be eligible for residency in a Home, regardless of income changes, if the conditions defined in Subsection 100.09 of these rules continue to be met. (3-30-01)

b. Residential and Domiciliary Care. If a resident's net monthly income exceeds the income eligibility

limit after admission to the Home, the resident may appeal to the Home Administrator for a waiver of the income eligibility limit which may be granted for good cause. Consideration for good cause must include “need for continuing medical care” as documented by a VA Medical Center physician. (3-30-01)

05. Charges. (3-30-01)

a. Nursing Care. After allowable deductions, a resident will be assessed a fee equal to the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge is based on historical costs that are adjusted to include anticipated costs and an inflation factor. Changes to the maximum charge are made pursuant to Section 916 of these rules. (3-30-01)

b. Residential Care. After allowable deductions, a resident will be assessed a fee of seventy-five percent (75%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be seventy-five percent (75%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12). (3-30-01)

c. Domiciliary Care. After allowable deductions, a resident will be assessed a fee of sixty percent (60%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be sixty percent (60%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12). (3-30-01)

06. Payment Schedule. Maintenance charges are due the first of each month and must be paid in full by the resident or guardian on or before the tenth day of the month. Payments may be made either by cash or by check, and a receipt will be issued. (3-15-02)

07. Security Deposit. A deposit of one hundred dollars (\$100) will be required by domiciliary and residential care residents upon admission to a Home, unless waived by the Home Administrator. This deposit will be held until the resident leaves. Any debts or liabilities on behalf of the resident will be offset against this deposit at that time. After payment of any debts or liabilities, the remaining balance of the deposit will be returned to the outgoing resident. (5-3-03)

08. Leave of Absence or Hospitalization. Residents receiving Medicaid, Medicare, or VA per diem will be charged for leave of absence or hospitalization in accordance with Medicaid, Medicare, and VA requirements. The Home will not reduce charges for leave of absence or hospitalization of residents not qualifying for Medicaid, Medicare, or VA payment for such absence and each day will count as if the resident were present at a Home. Unless waived by the Home Administrator or prohibited by law, the Home will charge residents receiving Medicaid, Medicare, or VA per diem the current VA per diem rate for each absent day of a leave of absence or hospitalization in excess of the period eligible for payment by Medicaid, Medicare, or the VA. (3-29-10)

09. Medicaid Eligibility. All nursing care residents, including re-admitted residents, entering a Home on or after July 1, 2000 must either apply for or become eligible for Medicaid benefits, or must pay the maximum monthly charge as it may be established from time to time. Eligibility for Medicaid benefits is determined entirely by the Idaho Department of Health and Welfare and its agents. Residents who cannot, or choose not to, qualify for Medicaid shall be required to pay for services in full from other than Medicaid funds. Care and services for those residents who are Medicaid eligible will be billed to and paid by Medicaid. Residents eligible for Medicaid will be assessed a fee equal to the resident’s liability as determined by Medicaid. (3-30-07)

916. MONTHLY CHARGES AND ALLOWANCES.

01. Nursing Care. Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of each Home. Charges and allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-30-01)

a. Changes to Charges and Allowances. Members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting. When changes are made to charges or allowances, residents or their families or sponsors will receive written notification and changes will be posted in the business office of each Home a minimum of thirty (30) days prior to the effective date of the change. (3-30-01)

02. Residential and Domiciliary Care. Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of the Homes. Allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-20-04)

a. Changes to Charges and Allowances. Pursuant to Paragraphs 915.05.b. and 915.05.c. of these rules, monthly charges for residential and domiciliary care will be adjusted automatically when a change is made to the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12). Relative to monthly allowances, members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting of Changes to Allowances. When changes are made to allowances, residents or their families or sponsors will receive written notification, and changes will be posted in the business office of the Veterans Homes a minimum of thirty (30) days prior to the effective date of the change. (3-20-04)

917. -- 949. (RESERVED)

950. FINANCIAL GROUNDS FOR REJECTION OR DISCHARGE.

The following circumstances may be considered as grounds for rejection of an application for residency or for revocation of residency and subsequent discharge. (When an application is rejected or a resident discharged, the applicant/resident will be given written notification of his intended application rejection or his discharge, in accordance with the provisions in Subsection 982.03 of these rules.) (3-30-01)

01. Disposal of Assets. If the Home Administrator determines that an applicant/resident has disposed of assets following or within sixty (60) months preceding initial application for residency, which would have the effect of reducing his maintenance charge, such action can lead to rejection of the application or discharge from a Home. (4-2-08)

02. Failure to Pay Maintenance Charge. Refusal or failure to pay the established maintenance charge can be cause for discharge from a Home. If the resident is so discharged, or leaves a Home voluntarily, he will not be eligible for readmission to a Home until all indebtedness to the Home is paid in full, or acceptable arrangements have been made with the Home Administrator for repayment. (3-30-01)

03. Failure to Pay for Services. (3-30-01)

a. Residents who are excluded from receiving free services from a VA Medical Center may elect to purchase such services through a sharing agreement or contract between a Home and a VA Medical Center or an outside provider when such sharing agreement or contract exists. In those cases where sharing agreement or contract costs are borne by a Home, the resident must reimburse the Home for the costs of services provided. (3-30-01)

b. Failure to reimburse a Home or a service provider within ten (10) days after receipt of a bill for services provided under a sharing agreement or contract may result in a resident's discharge from the Home. (3-30-01)

951. -- 979. (RESERVED)

980. NOTICE OF RESIDENT TRANSFER OR DISCHARGE AND NOTICE OF DENIAL OF AN APPLICATION FOR RESIDENCY.

The Home Administrator or his designee must notify the applicant or resident of any action to be taken regarding rejection of an application or transfer or discharge from a Home. (5-8-09)

01. Form of Notice. The notice of intended action must be in writing. (5-8-09)

- 02. Content of Notice.** The notice must state the following: (5-8-09)
- a.** The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; (5-8-09)
 - b.** The effective date of the action; (5-8-09)
 - c.** The applicant's or resident's right to request a hearing according to the provisions in Section 982 of these rules; and (5-8-09)
 - d.** The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. (5-8-09)
- 03. Notification Deadlines for Domiciliary Care.** The following notification deadlines are established for Domiciliary Care only: (5-8-09)
- a.** Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01, 350.03 and 350.04 of these rules. (5-8-09)
 - b.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (5-8-09)
- 04. Notification Deadlines for Residential Care.** The following notification deadlines are established for Residential Care only: (5-8-09)
- a.** Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01, 350.03 and 350.04 of these rules. (5-8-09)
 - b.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (5-8-09)
- 05. Notification Deadlines for Nursing Care.** The following notification deadlines are established for Nursing Care only: (5-8-09)
- a.** Notices of general discharge or transfer pursuant to Subsection 350.02 of these rules must be sent to the resident thirty (30) days prior to the intended effective date of the action. (5-8-09)
 - b.** Notices of emergency discharge or transfer pursuant to Subsection 350.01 of these rules must be sent to the resident as soon as practical. (5-8-09)
 - c.** Notices of discharge or transfer during absence pursuant to Subsection 350.03 of these rules must be sent to the resident within three (3) working days of the Home's determination to transfer. (5-8-09)
 - d.** Notice of discharge for unauthorized absences pursuant to Paragraph 350.02.k. of these rules must be sent to the resident within three (3) days of the last unauthorized absence establishing a basis for discharge. (5-8-09)
 - e.** The Home is not required to provide notice of voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. (5-8-09)
 - f.** Notification of the denial of an application for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (5-8-09)
- 06. Notice of Denial of Emergency Relief.** The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. (5-8-09)
- a.** The notice of denial must be in writing. (5-8-09)

- b.** The notice must state the following: (5-8-09)
 - i.** The reason for denial and a reference to the pertinent rules under which the denial was made; and (5-8-09)
 - ii.** The applicant's right to request a hearing according to the provisions in these rules; and (5-8-09)
 - iii.** The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. (5-8-09)
- c.** Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. (5-8-09)

981. APPEAL PROCEDURE.

Upon notification to a resident of transfer or discharge from a Home by the Home Administrator, the resident may request a hearing in accordance with the provisions in Section 982, "Provisions for Contested Cases," of these rules. Any additional violation of Home rules by a resident while on notice of transfer or discharge will be treated independent of any pending appeal. (5-8-09)

982. PROVISIONS FOR CONTESTED CASES.

01. Inapplicability of Idaho Rules of Administrative Procedure of the Attorney General. All contested cases shall be governed by the provisions of these rules. The Commission and Division Administrator find that the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable and inappropriate for contested cases before the Commission, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (3-30-01)

02. Hearing Rights. Residents and applicants have the following rights to a hearing: (5-8-09)

a. If a resident of a Home is notified of transfer or discharge, the resident will be afforded an opportunity for a hearing. A resident of a Home must attempt to resolve the bases stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing. A resident will not be afforded an opportunity for a hearing based upon a voluntary transfer or discharge under Subsection 350.04 of these rules. (5-8-09)

b. If an application for residency in a Home is rejected, the applicant may request a hearing. (5-8-09)

c. If an application for emergency relief is denied, the applicant may request a hearing. (5-8-09)

03. Requesting a Hearing. (3-30-01)

a. A request for a hearing from a resident or an applicant for residency in a Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or the scheduling of a hearing. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Paragraph 982.02.a. of these rules. (5-8-09)

b. A request for a hearing from an applicant for emergency relief must be submitted through the Veterans Services Program Supervisor to the Division Administrator for possible resolution or the scheduling of a hearing. (5-8-09)

c. A request for a hearing must be in writing and signed by the applicant/resident. (3-30-01)

d. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-30-01)

- e. Pending a hearing, benefits will be continued or held in abeyance as follows: (3-30-01)
 - i. Benefits for domiciliary care, residential care, and nursing care residents will not be continued when the transfer or discharge is an emergency discharge under Subsection 350.01 of these rules or a discharge for unauthorized absences under Paragraph 350.02.k. of these rules. If the hearing request is made before the effective date of action and within three (3) days of receipt of the notice, no action will be taken by the Home Administrator on a general discharge under Subsection 350.02 of these rules, except Paragraph 350.02.k., or a transfer under Subsection 350.03 of these rules pending receipt of the final order. (5-8-09)
 - ii. Benefits for emergency relief applicants will not be granted until issuance of the final order. (5-8-09)
- f. The Division Administrator will not accept a request for a hearing from a voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. (5-8-09)

983. PREHEARING PROVISIONS.

The following general provisions are applicable to those phases of all appeals which occur before the hearing is conducted unless precluded by statute or rule. (5-8-09)

01. Notice of Hearing. Upon the receipt of a timely request for a hearing, the hearing shall be arranged by the Division Administrator and a notice sent to all parties. The notice shall include: (5-8-09)

- a. A statement of the time, place and nature of the hearing; (3-30-01)
- b. A statement of the legal authority under which the hearing is to be held; (3-30-01)
- c. A reference to the particular sections of any statutes and rules involved; (3-30-01)
- d. A statement of the issues involved; (3-30-01)
- e. A statement that all documents to be relied upon by the hearing officer to make its order or notice of decision, or otherwise related to the issues involved in the hearing and relied upon by any party, are to be filed with the Division Administrator and that each party must serve its own documents unless otherwise stated by law; (5-8-09)
- f. A statement that all parties may be represented by counsel; and (3-30-01)
- g. A statement concerning advance requests for hearing transcripts pursuant to Subsection 983.08 of these rules. (3-30-01)
- h. The assignment of a hearing officer for the hearing. The Division Administrator may designate the Commission as a hearing officer. (5-8-09)

02. Prehearing Conference. The Division Administrator or hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference for the following purposes: (5-8-09)

- a. To formulate or simplify the issues; (3-30-01)
- b. To obtain admissions or stipulations of fact and of documents; (3-30-01)
- c. To arrange for exchange of proposed exhibits or prepared expert testimony; (3-30-01)
- d. To limit the number of witnesses; (3-30-01)
- e. To determine the procedure at the hearing; and (3-30-01)

f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)

03. Disposition of Case Without a Hearing. Unless precluded by law, disposition without a hearing may be made of any contested case by stipulation, agreed settlement, consent order, motions to dismiss, summary judgment, or default. (3-30-01)

04. Withdrawal of Appeal. The initiating party at any time may withdraw from any contested case proceeding upon serving written notice of withdrawal to the Division Administrator. (3-30-01)

05. Withdrawal of Attorney or Representative. Any attorney or other person representing a party in a contested case proceeding who wants to withdraw from such proceeding must immediately notify, in writing, the Division Administrator, and all involved parties. (3-30-01)

06. Intervention. Persons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, may intervene if they first secure an order from the Division Administrator granting leave to intervene. (3-30-01)

a. Granting of Leave to Intervene. The granting of leave to intervene or to otherwise appear in any matter or proceeding shall not be construed to be a finding or determination that such party will or may be a party aggrieved by any ruling, order or decision of the agency for purposes of judicial review or appeal. (3-30-01)

b. Form and Content of Petitions. Petitions for leave to intervene must be in writing and must clearly: (3-30-01)

i. Identify the proceeding in which it is sought to intervene, setting forth the name and address of the intervenor; (3-30-01)

ii. Make a clear and concise statement of the direct and substantial interest of the intervenor in such proceeding and the relationship of the intervenor to the other parties; (3-30-01)

iii. State the manner in which such intervenor will be affected by such proceeding, outlining the matters and things relied upon by such intervenor as a basis for his request to intervene in such cause; (3-30-01)

iv. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof; and (3-30-01)

v. A statement as to the nature and quantity of evidence the intervenor will present if such petition is granted. (3-30-01)

c. Filing of Petitions. All petitions must be filed with the Division Administrator. Petitions to intervene and proof of service thereof on all other parties of record must be filed within seven (7) days after receiving notice of the proceeding, or if no notice is received, not less than fourteen (14) days prior to the date set for hearing and, if filed thereafter, must state a substantial reason for such delay; otherwise the petition will not be considered. (3-30-01)

07. Hearing Record. The hearing officer or the Division Administrator will arrange for a record to be made of the hearing. The record must be a verbatim record and it will be recorded by a recording device, 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 transcription, and prepayment or guarantee of payment may be required. Once a transcription is requested, any party may obtain a copy at the party's own expense. The recorded proceedings will be provided to the Division Administrator for inclusion into the record. The Division shall maintain an official 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. The record shall include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the hearing officer or the Division Administrator, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any

transcript of all or part of the proceedings, staff memoranda or data submitted to the hearing officer or the Division Administrator in connection with the proceeding, and any recommended order, preliminary order, final order or order on reconsideration. (5-8-09)

08. Subpoenas. Where authorized by law, the hearing officer may compel the attendance of specific persons and the production of specific documents, materials, or objects at any hearing by subpoena issued by the Division Administrator. (5-8-09)

09. Stipulations. The parties to a contested case proceeding may stipulate as to any fact at issue, either by written stipulation or by oral statement shown upon the record. Any such stipulation shall be binding upon all parties so stipulating and may be considered by the hearing officer and the Division Administrator. The hearing officer and the Division Administrator may require proof by evidence of any facts stipulated to, notwithstanding the stipulation of the parties. (5-8-09)

10. Rules of Civil Procedure. As contested case proceedings and hearings are informal, the Idaho Rules of Civil Procedure shall not apply. The hearing officer shall provide the procedure at the hearing, as required by the provisions of Section 67-5242(3), Idaho Code. (5-8-09)

11. Discovery. Prehearing discovery shall be strictly limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer or present at the hearing. The hearing officer may order disclosure of this information if a party refuses to comply after receiving a written request. (5-8-09)

12. Briefing Schedule. The hearing officer may require briefs and written memoranda to be filed by the parties, and may establish a reasonable briefing schedule. (5-8-09)

13. Informal Disposition. Unless otherwise prohibited by statute or rule, the hearing officer may decline to initiate a contested case. Informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement or consent order, which informal settlement is encouraged. The parties may stipulate as to the facts, reserving their right to appeal to a court of competent jurisdiction on issues of law. The hearing officer may request such additional information as may be required to decide whether to initiate or to decide a contested case. If the hearing officer declines to initiate or decide a contested case, a brief statement of the reasons for that decision will be furnished to all persons or parties involved. This disposition of a contested case by informal disposition shall be a final agency action pursuant to Section 67-5241, Idaho Code. (5-8-09)

984. HEARING PROVISIONS.

The following general provisions are applicable to those phases of all hearings, unless precluded by statute or rule. (5-8-09)

01. Computation of Time. In computing any period of time relating to a hearing, the first day of the period is not to be included. The last day of the period is to be included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until 5 p.m. of the next working day, unless otherwise provided by law. (5-8-09)

02. Service of Documents. Documents concerning hearings must be served as follows: (5-8-09)

a. All pleadings, briefs and subsequent papers must be served upon every party of record concurrently with the filing with the Division Administrator. (3-30-01)

b. All notices and orders required to be served, other than the initial complaint or petition, must be served in person or by first-class mail. (3-30-01)

c. The initial complaint or petition must be served in person or by certified mail. (3-30-01)

c. The initial hearing request must be served in person or by certified mail. (5-8-09)

d. Service by first-class or certified mail will be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail. The postmark shall be the determinant date for all time lines. (3-30-01)

- e. Proof of service must accompany all documents when they are filed with the Division Administrator. (5-8-09)
- 03. Hearing Officer Authority.** The hearing officer shall, in the context of each proceeding and unless precluded by law, have the discretion, power and authority to: (5-8-09)
- a. Determine the order of presentation; (3-30-01)
 - b. Grant or deny petitions for reconsideration; (3-30-01)
 - c. Determine the need, if any, for consolidation; (3-30-01)
 - d. Rule on all evidentiary questions; (3-30-01)
 - e. Rule on motions and objections and dispose of procedural requests; (3-30-01)
 - f. Determine the need for prehearing conferences, recesses, adjournments, hearings on motions and postponements; (3-30-01)
 - g. Administer oaths and affirmations; (3-30-01)
 - h. Examine witnesses; (3-30-01)
 - i. Issue subpoenas or request orders in the form of subpoenas as provided by law; (3-30-01)
 - j. Prescribe general rules of hearing decorum and conduct; (3-30-01)
 - k. Regulate the course of the proceeding; (3-30-01)
 - l. Formulate a reasoned statement in support of the decision. Findings of fact should be set forth in statutory language and shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. (3-30-01)
 - m. Perform any functions including those set forth in Sections 67-5241 through 67-5251, Idaho Code; and (3-30-01)
 - n. All other functions specifically authorized by statute or rule. (3-30-01)
 - o. The hearing officer shall not have the jurisdiction or authority to invalidate any federal or state statute, rule, or regulation. (5-8-09)
- 04. Ex Parte Consultations.** Ex parte communications between the hearing officer and any party to a contested case proceeding are precluded pursuant to Section 67-5253, Idaho Code. (5-8-09)
- 05. Representation by Counsel.** Any party in a contested case proceeding may be represented by counsel, at the party's own expense. (3-30-01)
- 06. Open Hearings.** All hearings may be open to the public, unless precluded by law. When the Commission is acting as a hearing officer, hearings shall be held during regular meetings of the Commission unless otherwise scheduled by the Commission and will be arranged by the Division Administrator. (5-8-09)
- 07. Testimony Under Oath.** All testimony to be considered, with the exception of matters officially noticed or entered by stipulation, must be given under oath, as administered by the hearing officer or other authority authorized to administer oaths. (5-8-09)
- 08. Appearance and Representation.** Any party to a proceeding may appear and be heard in person or

may authorize an attorney to represent the party at the party's own expense. Unless otherwise prohibited by law and with the prior approval of the hearing officer, a party may be assisted, but not represented, by a friend or relative. When a party chooses to appear in person and does not speak or understand the English language, an interpreter shall be allowed to interpret under oath. The interpreter shall not be allowed to act as a representative of the party and shall act at the party's own expense. (5-8-09)

09. Default. If a party fails to appear at a scheduled hearing or at any stage of a contested case without good cause and reasonable notice to the hearing officer and to all other parties, the hearing officer may enter a notice of proposed default order against the nonappearing party. A default order may be altered or set aside upon petition filed within seven (7) days of service of the order showing sufficient good cause stating the grounds relied on, and providing reasonable notice to all parties. (5-8-09)

10. Order of Presentation and Burden of Proof. At any contested case hearing, the party having the burden of proof shall be the first to present testimony unless the hearing officer determines otherwise. Unless otherwise determined, in advance, by the hearing officer, the burden of proof shall be preponderance of the evidence. (5-8-09)

11. 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, duly repetitious evidence, or evidence excludable on constitutional or statutory grounds protected by the rules of privilege recognized by law may be excluded. Hearsay evidence may be received if it is relevant to or corroborates competent evidence, but shall not be the sole basis for any finding of fact. 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. (3-30-01)

12. Testimony by Telephone or Other Electronic Means. With the prior approval of the hearing officer, witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. (5-8-09)

13. Official Notice. (3-30-01)

a. Discretionary Notice. Notice may be taken of judicially cognizable facts by the hearing officer 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 hearing officer'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 hearing officer's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (5-8-09)

b. Mandatory Notice. For all hearings, the hearing officer must take official notice of the following materials on its own motion or on the motion of any party. Objections going to such notice must become a part of the record. For the purposes of the hearing, it is established as true without proof that the following are admissible, valid and enforceable: (5-8-09)

- i. Rules of the Division and other state agencies; (3-30-01)
- ii. Federal regulations; (3-30-01)
- iii. The constitution and statutes of the United States and Idaho; (3-30-01)
- iv. Public records; and (3-30-01)
- v. Such other materials that a court of law must judicially notice. (3-30-01)

14. Hearing Officer Decision. The hearing officer will issue a written order as provided in Section 67-5243, Idaho Code. (5-8-09)

a. Recommended orders will contain a statement of the schedule for review of that order by the Division Administrator. (5-8-09)

b. Preliminary orders will include notice of the right to seek a review of the order by the Division Administrator and a statement that the order will become final without a request for such review. A request for review shall be filed no later than fourteen (14) days following the issuance of the preliminary order, unless a request for reconsideration by the hearing officer is filed prior to the expiration of such fourteen (14) day period. If a petition for reconsideration is made, a request shall be filed within fourteen (14) days of the hearing officer's order disposing of the petition or the deemed denial of the petition pursuant to Section 67-5243, Idaho Code. (5-8-09)

c. A party may file a motion for reconsideration with the hearing officer no later than fourteen (14) days following the issuance of the preliminary order or the recommended order. (5-8-09)

15. Contents of the Record. Pursuant to Section 67-5249(2), Idaho Code, the record in a contested case proceeding shall be kept by the Division Administrator, on behalf of the hearing officer, and must include the following: (5-8-09)

- a. All notices, pleadings, motions and rulings; (3-30-01)
- b. All evidence received or considered; (3-30-01)
- c. A statement of all matters officially noticed; (3-30-01)
- d. A record of testimony and offers of proof, objections and rulings thereon; (3-30-01)
- e. A record of proposed findings and exceptions; (3-30-01)
- f. Any decision, opinion, or report by the Commission; (3-30-01)
- g. All staff memoranda or data submitted to the Commission in connection with consideration of the case; (3-30-01)
- h. All briefs or memoranda submitted by any party; and (3-30-01)
- i. Any recommended order, preliminary order, final order, or order on reconsideration. (3-30-01)

16. Review by the Division Administrator and Issuance of the Final Order. Following the issuance of an order by the hearing officer, the Division Administrator will: (5-8-09)

- a. Review recommended orders as provided in Section 67-5244, Idaho Code; (5-8-09)
- b. Review preliminary orders upon the appeal of a party or upon the Division Administrator's own motion as provided in Section 67-5245, Idaho Code; and (5-8-09)
- c. Issue a final order as provided in Section 67-5246, Idaho Code. (5-8-09)

17. Judicial Review. In accordance with Section 67-5271, Idaho Code, a party which has exhausted all administrative remedies available within the Division may seek judicial review. Proceedings for judicial review shall be instituted in accordance with Sections 67-5270 and 67-5273, Idaho Code. (3-30-01)

985. POST HEARING PROVISIONS.

The following provisions are applicable to those phases of all contested case proceedings which occur after the hearing has been conducted: (3-30-01)

01. Service of Decisions and Orders. Decisions and orders shall be deemed to have been served when copies thereof are mailed to all parties of record or their attorneys by the Division Administrator. (3-30-01)

02. No Motions for Reconsideration. Unless otherwise provided by law or these rules, motions for reconsideration shall not be permitted. (3-30-01)

03. Public Inspection. All final decisions and orders of the Commission must be maintained by the Division Administrator and made available for public inspection after service on the parties. (3-30-01)

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

986. -- 999. (RESERVED)

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