

IDAPA 04 – IDAHO OFFICE OF THE ATTORNEY GENERAL

04.12.01 – Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed by Health Care Providers

Who does this rule apply to?

The rules apply to every applicant for a certificate of public advantage for a cooperative agreement by or among health care providers and any petitioner for review of or complainant for revocation of an existing certificate of public advantage.

What is the purpose of this rule?

The purpose of these rules is to establish procedures for applications for a certificate of public advantage for a cooperative agreement by or among health care providers and any petitions for review of or complaints for revocation of an existing certificate of public advantage.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

- [Section 39-4901, et seq., Idaho Code](#) – Health Planning Act

Who do I contact for more information on this rule?

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**SUBCHAPTER A – GENERAL PROVISIONS
(Rules 0 through 99)**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Chapter 49, Title 39, Idaho Code. (1-1-95)

001. TITLE AND SCOPE (RULE 1).

01. Title. This chapter is titled “Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed by Health Care Providers.” (1-1-95)

02. Scope. Every application for a certificate of public advantage for a cooperative agreement by or among health care providers and any petition for review of or complaint for revocation of an existing certificate of public advantage must follow the procedures in these rules. (1-1-95)

002. WRITTEN INTERPRETATIONS -- ATTORNEY GENERAL GUIDELINES (RULE 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules and review of comments submitted in the rule-making in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General's policies concerning administration of certificates of public advantage for the approval of cooperative agreements of health care providers will be maintained for public inspection. (1-1-95)

003. ADMINISTRATIVE REVIEW (RULE 3).

Petitions for the Attorney General's discretionary administrative review of hearing officer's preliminary orders under this chapter may be taken as set forth in rule 730. (1-1-95)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General's policies concerning administration of certificates of public advantage for the approval of cooperative agreements of health care providers are public records be available for inspection. (1-1-95)

005. DEFINITIONS (RULE 5).

As used in this chapter: (1-1-95)

01. Cooperative Agreement. Cooperative agreement means a written agreement between two (2) or more health care providers for the sharing, allocation or referral of patients, or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic, therapeutic or procedures or other services customarily offered by health care providers. (1-1-95)

02. Certificate of Public Advantage. Certificate of public advantage means a document issued by the Attorney General to parties to a cooperative agreement, verifying that the Attorney General declares that the purposes and objectives of the cooperative agreement meet the standards for such agreements set forth by statute. (1-1-95)

03. Health Care Provider. Health care provider means any person or health care facility licensed, registered, certified, permitted or otherwise officially recognized by the state to provide health care services in Idaho; or in the case of a freestanding outpatient facility, one for which a facility fee is charged for health care services performed within. (1-1-95)

04. Health Care Services. Health care services include, but are not limited to, services provided by: (1-1-95)

a. Acute, subacute and intermediate care facilities; (1-1-95)

b. Dentists, denturists, orthodontists and their assistants; (1-1-95)

c. Doctors, physicians, surgeons and their assistants; (1-1-95)

d. Hospitals and medical centers; (1-1-95)

- e. Home health services and outpatient clinics; (1-1-95)
- f. Laboratories and laboratory technicians; (1-1-95)
- g. Nurses; (1-1-95)
- h. Nursing homes; (1-1-95)
- i. Oculists, opticians, optometrists, ophthalmologists and their assistants; (1-1-95)
- j. Podiatrists and their assistants; (1-1-95)
- k. Psychiatrists, psychologists, and psychotherapists and their assistants; (1-1-95)
- l. Pharmacies and pharmacists; and (1-1-95)
- m. Rehabilitation services (including chiropractic, physical and occupational therapies). (1-1-95)

006. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 6).

Except as otherwise provided by this rule, notification of intent to file an initial application under this chapter or initial applications themselves must be filed with the receptionist in the Attorney General's office in Room 210 of the Statehouse. However, once a hearing officer has been appointed by the Attorney General to hear a contested case proceeding in an application under this chapter, the hearing officer may provide by notice or order for filings to made at a different address. (1-1-95)

007. ATTORNEY GENERAL'S RULES OF ADMINISTRATIVE PROCEDURE SUPERSEDED FOR CONTESTED CASES (RULE 7).

Except as otherwise provided, these rules supersede the Attorney General's Rules of Administrative Procedure for contested cases, IDAPA 04.11.01.100 through 04.11.01.799, for the administration of Chapter 49, Title 39, Idaho Code, because the Attorney General finds that consideration of cooperative agreements of health care providers under Chapter 49, Title 39, Idaho Code, requires specialized rules of procedure with requirements in addition to those found in the Attorney General Rules of Administrative Procedure. These rules adopt the Attorney Generals Rules of Administrative Procedure IDAPA 04.11.01.800 through 04.11.01.860 for rulemaking under Chapter 49, Title 39, Idaho Code. (1-1-95)

008. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before the Attorney General in contested cases on applications for the issuance of a certificate of public advantage for a cooperative agreement among or between health care providers and on petitions for review of or for complaints in revocation of an existing certificate of public advantage. (1-1-95)

051. (RESERVED)

052. ADOPTION BY REFERENCE OF RULES ADDRESSING CONSTRUCTION OF THESE RULES, COMMUNICATIONS TO THE OFFICE, SERVICE BY THE OFFICE AND COMPUTATION OF TIME (RULE 52).

Rules 552 through 566 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.552 through 04.11.01.566, addressing construction of these rules, communications to the office, service by the office, and computation of time, are hereby adopted by reference. (1-1-95)

053. -- 099. (RESERVED)

**SUBCHAPTER B – CONTESTED CASES
Rules 100 through 999**

**Part 1 -- Rules 100 through 399 -- Definitions and General Provisions
a. Rules 100 through 149 -- Informal and Formal Proceedings**

100. ADOPTION BY REFERENCE OF RULES ADDRESSING INFORMAL PROCEEDINGS (RULE 100).

Rules 100 and 102 through 104 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.100 and 04.11.01.102 through 04.11.01.104, addressing informal proceedings, are hereby adopted by reference. (1-1-95)

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use informal proceedings to expedite or simplify formal contested cases. Informal procedure may include individual contacts by or with the Attorney General’s investigative/prosecutorial staff asking for information, advice or assistance from the investigative/prosecutorial staff, or proposing a resolution of the application to the investigative/prosecutorial staff. Informal procedures may be conducted in writing, by telephone or television, or in person. All informal proceedings involving the Attorney General’s investigative/prosecutorial staff shall be open to the public. (1-1-95)

102. -- 109. (RESERVED)

110. NOTICE OF INTENT TO FILE APPLICATION (RULE 110).

The Attorney General encourages all applicants for a certificate of public advantage to initiate an informal proceeding before the beginning of a formal proceeding by filing a notice of intent to file application four (4) to eight (8) weeks before the formal filing of an application for a certificate of public advantage. The notice of the intent to file application is a public document that will be the subject of press releases or other attempts to inform the public of the proposed application. The notice of intent must list the parties that will file an application for a certificate of public advantage and generally describe the nature of the cooperative agreement that will be the subject of the application to follow. (1-1-95)

111. PROCEDURE UPON RECEIPT OF NOTICE OF INTENT TO FILE APPLICATION (RULE 111).

Within one (1) week of the receipt of a notice of intent to file application, the Office of the Attorney General will appoint a hearing officer for the formal proceeding to follow and will assign staff to an investigative role for informal discussion with the prospective applicants concerning the application and the investigative/prosecutorial staff’s position on the application. The purposes of these discussions between investigative/prosecutorial staff and the potential applicant, which will be open to interested members of the public, will be to gain understanding of the application to follow, to simplify or clarify issues that will be the subject of the application to follow, and to generally improve the presentations of all parties in the contested case hearing that will follow. Neither the prosecutorial investigative staff nor the applicant shall have any ex parte conduct with the hearing officer on any matter of substance concerning the pending application. (1-1-95)

112. -- 149. (RESERVED)

b. Rules 150 through 199 - Parties -- Other Persons

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).

Parties to contested cases under Title 39, Chapter 49, are called applicants, petitioners, complainants, respondents, or intervenors. On reconsideration or discretionary review by the Attorney General parties are called by their original titles listed in the previous sentence. (1-1-95)

151. APPLICANTS (RULE 151).

Persons who seek a certificate of public advantage from the Attorney General are called “applicants.” (1-1-95)

152. PETITIONERS (RULE 152).

Persons not applicants who seek to modify, amend or stay existing certificates of public advantage, to clarify their

rights or obligations under existing certificates of public advantage, or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” (1-1-95)

153. COMPLAINANTS (RULE 153).

Persons who charge other person(s) with any act or omission with regard to certificates of public advantage are called “complainants.” In any proceeding in which the Attorney General’s investigative/prosecutorial staff itself charges a person with an act or omission or seeks revocation of a certification, the Attorney General’s investigative/prosecutorial staff is called “complainant.” (1-1-95)

154. RESPONDENTS (RULE 154).

Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” (1-1-95)

155. INTERVENORS (RULE 155).

Persons, not applicants, complainants, or respondents to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354, are called “intervenors.” (1-1-95)

156. INVESTIGATIVE/PROSECUTORIAL STAFF (RULE 156).

The Attorney General may designate an investigative/prosecutorial staff that may appear, without intervention, in all proceedings under these rules. The investigative/prosecutorial staff has all rights to participate as a party in proceedings under these rules. (1-1-95)

157. RIGHTS OF PARTIES AND OF ATTORNEY GENERAL INVESTIGATIVE/PROSECUTORIAL STAFF (RULE 157).

Subject to Rules 558, 560, and 600, all parties and the Attorney General’s investigative/prosecutorial staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (1-1-95)

158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

The term “person” includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in an administrative proceeding. Persons other than the persons named in Rules 151 through 155 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. Persons may request the Attorney General in writing that they be notified when proceedings of a given kind are initiated. These persons are called “Interested Persons.” Interested persons may become intervenors or public witnesses. The Attorney General will serve notice of such proceedings on all interested persons. (1-1-95)

159. -- 199. (RESERVED)

c. Rules 200 through 209 - Representatives of Parties

200. ADOPTION BY REFERENCE OF RULES ADDRESSING REPRESENTATIVES OF PARTIES (RULE 200).

Rules 200 through 207 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.200 through 04.11.01.207, addressing representation of parties, are hereby adopted by reference. (1-1-95)

201. -- 209. (RESERVED)

d. Rules 210 through 299 - Pleadings -- In General

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications, petitions, complaints, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party’s initial pleading in any proceeding must comply with Rule 200. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 301. A party may adopt or join any other party’s pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (1-1-95)

211. -- 219. (RESERVED)

220. APPLICATIONS -- DEFINED -- FORM AND CONTENTS (RULE 220).

01. Applications Defined. All pleadings requesting a certificate of public advantage are called “applications.” (1-1-95)

02. Form and Contents. Applications for a certificate of public advantage must contain the information required in Subsections 220.03 through 220.08. (1-1-95)

03. Listing of Parties. The application must list by name, business address, and business telephone all health care providers party to the cooperative agreement. (1-1-95)

a. If the health care provider is a corporation, the application must list the corporation’s principal executive officer or such other officer as the corporation may designate as contact for the corporation, the primary business address of the corporation, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the corporation, and the primary Idaho business telephone if the primary business telephone is not in Idaho. (1-1-95)

b. If the health care provider is a partnership, the application must list the partnership name and each partner’s name, the primary business address of the partnership, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the partnership, and the primary Idaho business telephone if the primary business telephone is not in Idaho. (1-1-95)

c. If the health care provider is an individual or an association of individuals, the application must list the association’s name (if there is one) and each individual’s name, the primary business address of the association and each individual, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the association and each individual, and the primary Idaho business telephone if the primary business telephone is not in Idaho or give a specific description of the individuals involved, e.g., all doctors in () County referring patients to () Hospital under the terms of the agreement attached as exhibit 1 to the application. (1-1-95)

04. Description of Agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. (1-1-95)

05. Listing of Benefits. The application shall state whether one (1) or more of the following benefits will result from the issuance of a certificate of public advantage for the cooperative agreement and shall list any other additional benefits that the applicants wish to be taken into account in the consideration of the application. (1-1-95)

a. The quality of health care provided to consumers will be enhanced; (1-1-95)

b. A hospital, if any, and other health care facilities that customarily serve the communities in the area likely to be affected by the cooperative agreement will be preserved; (1-1-95)

c. Services provided by the parties to cooperative agreement will gain cost efficiency; (1-1-95)

d. The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve; or (1-1-95)

e. Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided. (1-1-95)

06. Supporting Analyses. The application shall be accompanied by the prepared testimony of witnesses to be called at hearing by the applicants and additional reports, studies, etc., that the witnesses would

introduce at hearing as exhibits supporting the application. The prepared testimony and exhibits shall address each of the potential benefits listed in Subsection 220.05 that are claimed by the applicants and any additional benefits that the applicants wish to be taken into consideration. (1-1-95)

07. Statement Concerning Discovery. The application shall state whether the applicant consents to discovery under these rules. (1-1-95)

08. Statement Concerning Fund for Expert Witnesses. The application shall state whether the applicant consents to provide a fund for the investigative/prosecutorial staff of the Office of the Attorney General to hire experts to evaluate the application. If the applicant so consents, it shall specify the amount of the fund available or that the applicant would propose to negotiate the amount with the investigative/prosecutorial staff of the Office of the Attorney General. (1-1-95)

09. Defective or Insufficient Applications. If an application does not contain all of the information required by this rule, it is defective or insufficient. (1-1-95)

221. -- 229. (RESERVED)

230. ADOPTION BY REFERENCE OF RULES ADDRESSING PETITIONS, COMPLAINTS, MOTIONS, ANSWERS AND CONSENT AGREEMENTS (RULE 230).
Rules 230, 240, 260, 270 AND 280 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.230, 04.11.01.240, 04.11.01.260, 04.11.01.270, and 04.11.01.280, addressing petitions, complaints, motions, answers, and consent agreements are hereby adopted by reference. (1-1-95)

231. -- 299. (RESERVED)

e. Rules 300 through 349 -- Filing, Service, Amendment and Withdrawal of Documents

300. FILING DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 300).

An original and two (2) copies of all documents intended to be part of the record of a contested case must be filed with the Office of the Attorney General or such other person as designated by the hearing officer. The original shall be for the hearing officer and the two copies for the Attorney General's investigative/prosecutorial staff. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX). Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (1-1-95)

301. ADOPTION BY REFERENCE OF RULES ADDRESSING SERVICE OF PLEADINGS AND OTHER RULES ON PLEADINGS (RULE 301).

Rules 301 through 305 of the Attorney General's Idaho Rules of Administrative Procedure, IDAPA 04.11.01.301 through 04.11.01.305, addressing pleadings, hereby adopted by reference. (1-1-95)

302. -- 349. (RESERVED)

f. Rules 350 through 399 - Intervention -- Public Witnesses

350. ADOPTION BY REFERENCE OF RULES ADDRESSING INTERVENTION AND PUBLIC WITNESSES (RULE 350).

Rules 350 through 355 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.350 through 04.11.01.355, addressing intervention and public witnesses, are hereby adopted by reference. (1-1-95)

351. -- 399. (RESERVED)

**Part 2. Rules 400 through 499 -- Declaratory Rulings and Orders -- Hearing Officers --
Presiding Officers -- Dual Investigatory and Adjudicatory Functions**

a. Rules 400 through 409 -- Declaratory Rulings

400. ADOPTION BY REFERENCE OF RULES ADDRESSING DECLARATORY RULINGS (RULE 400).

Rules 400 through 402 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.400 through 04.11.01.402, addressing declaratory orders, are hereby adopted by reference. (1-1-95)

401. -- 409. (RESERVED)

b. Rules 410 through 419 -- Hearing Officers -- Presiding Officers

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the Attorney General appointed to hear contested cases on behalf of the Attorney General. Hearing officers may be deputy attorneys general, other employees of the Attorney General or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues of health care providers' cooperative agreements. The appointment of a hearing officer is a public record available for inspection, examination and copying. (1-1-95)

411. HEARING OFFICERS CONTRASTED WITH ATTORNEY GENERAL (RULE 411).

The Attorney General is not a hearing officer, even if the Attorney General presides at a contested case. The term "hearing officer" as used in these rules refers only to presiding officers other than the Attorney General. (1-1-95)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code, there are two (2) rules for disqualification of hearing officers. (1-1-95)

01. Disqualification in Applications for Certificate. Section 39-4303(3) requires applications for a certificate of public advantage to be heard within sixty (60) days. Accordingly, under Section 67-5252, Idaho Code, no party to the contested case can disqualify a hearing officer except for cause. (1-1-95)

02. Disqualification in Other Contested Cases. In other contested cases, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a hearing officer. Any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the Attorney General, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. (1-1-95)

03. Motion for Disqualification. Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or promptly upon discovering facts establishing grounds for disqualification, whichever is later. A hearing officer whose disqualification is requested shall determine in writing whether to grant the motion for disqualification, stating facts and reasons for the hearing officer's determination. Disqualification of the Attorney General is not allowed. See Sections 59-704 and 67-5252(4), Idaho Code. (1-1-95)

413. ADOPTION BY REFERENCE OF RULES ADDRESSING HEARING OFFICERS AND PRESIDING OFFICERS (RULE 413).

Rules 413 through 417 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.413 through 04.11.01.417.17, addressing hearing officers and presiding officers, are hereby adopted by reference. (1-1-95)

414.-- 419. (RESERVED)

**c. Rules 420 through 429 -- Responsibility for Investigative/Prosecutorial and Adjudicatory
Functions upon Consideration of Contested Cases**

**420. CONTRAST BETWEEN OFFICE OF ATTORNEY GENERAL'S INVESTIGATIVE/
PROSECUTORIAL AND ADJUDICATORY FUNCTIONS (RULE 420).**

Rules 420 through 429 set forth procedures to be followed by the Office of the Attorney General in processing

applications for a certificate of public advantage and in conducting proceedings to revoke certificates of public advantage. (1-1-95)

01. Investigative/Prosecutorial Function. The investigative/prosecutorial function is performed by deputy attorneys general and other personnel or consultants assigned to review applications for a certificate of public advantage or to prosecute proposed revocations of certificates of public advantage. The investigative/prosecutorial function includes gathering of evidence concerning an application or potential revocation outside of formal contested case proceedings, presentation of allegations or evidence for determination whether a complaint to revoke a certificate will be issued, and presentation of evidence in a formal contested case proceeding. (1-1-95)

02. Adjudicatory Function. The adjudicatory function is performed by a hearing officer appointed by the Attorney General or by the Attorney General upon review of the hearing officer's preliminary order. The adjudicatory function includes deciding whether to issue a complaint for revocation of a certificate upon the basis of allegations before the Office of the Attorney General, deciding whether to accept a consent order or other settlement of a complaint, and deciding the merits of an application or a complaint following presentation of evidence in formal contested case proceedings. A deputy attorney general may be assigned to be a hearing officer. (1-1-95)

421. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR COMPLAINT (RULE 421).

This rule sets forth procedures to be followed by the Office of the Attorney General upon receipt of an inquiry whether or how an application for a certificate should be made or whether a complaint to revoke a certificate should be issued. (1-1-95)

01. The Attorney General. When the public contacts the Attorney General, the Attorney General may: explain the office's procedures; explain the office's jurisdiction or authority (including the statutes or rules administered by the Attorney General); and direct the public to appropriate staff personnel who can provide assistance or who can advise them how to pursue a formal proceeding before the Attorney General. No statement of the Attorney General in response to a public inquiry constitutes a finding of fact, conclusion of law or other decision on the underlying matter. (1-1-95)

02. Deputy Attorneys General. When the public contacts a deputy attorney general (other than a deputy attorney general assigned to be a hearing officer) to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, the deputy attorney general may: explain the procedures to be followed; explain the Attorney General's jurisdiction or authority (including an explanation of the statutes or rules administered by the Attorney General); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a formal proceeding before the Attorney General. A deputy attorney general assigned to an investigative/prosecutorial role may discuss whether given allegations would, in the deputy's opinion, warrant the issuance of a certificate or a complaint to revoke a certificate or warrant direction to staff to pursue further investigation. Neither a hearing officer nor the Attorney General is bound by the deputy's advice or recommendations, and the deputy should notify the public that neither a hearing officer nor the Attorney General is obligated to follow the deputy's advice or recommendations. (1-1-95)

03. Other Staff. When the public contacts other staff in the Office of the Attorney General to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, a staff member authorized to respond may: explain the Attorney General's procedures; explain the Attorney General's jurisdiction or authority (including an explanation of the statutes or rules administered by the Attorney General); direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the Attorney General; and express an opinion whether given allegations would, in the staff's opinion, warrant the issuance of a complaint or warrant staff's further investigation. Neither the hearing officer nor the Attorney General is bound by the staff's advice or recommendations, and the staff should notify the public that neither the hearing officer nor the Attorney General is obligated to follow the staff's advice or recommendations. (1-1-95)

04. Hearing Officers. When the public contacts a hearing officer to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other personnel. (1-1-95)

422. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS (RULE 422).

This rule sets forth procedures to be followed by the Office of the Attorney General when a consent agreement, stipulated settlement, or other settlement is negotiated before an application for a certificate of public advantage or an complaint for revocation of a certificate is filed. (1-1-95)

01. Negotiations. A deputy attorney general assigned to an investigative/prosecutorial role and other staff may negotiate consent agreements or other settlements. Neither the Attorney General nor a hearing officer may participate in these negotiations, but the Attorney General may have rules or guidelines for issuance of consent agreements or other general policy statements available to guide individual negotiations. (1-1-95)

02. Presentation of Consent Agreement. Consent agreements must be presented to the Office of the Attorney General for approval. The consent agreement may be presented to the Office of the Attorney General by representatives of any party, unless the agreement provides to the contrary. (1-1-95)

03. Consideration of Consent Agreement. A consent agreement that is presented to the Office of the Attorney General must be reviewed under this rule. A hearing officer will be assigned to review the consent agreement. The hearing officer may accept or reject the consent agreement, indicate how the consent agreement must be modified to be acceptable, or inform the parties what further information is required for consideration of the consent agreement. When a consent agreement is rejected, no matter recited in the rejected consent agreement may be used as an admission against a party in any later proceeding before the Attorney General, and any such matter must be proven by evidence independent of the consent agreement. Any acceptance or rejection of the consent agreement shall be done by preliminary order, which may be reviewed by the Attorney General as any other preliminary order. (1-1-95)

423. PROCEDURES AFTER INITIATION OF FORMAL CASE (RULE 423).

This rule sets forth procedures to be followed by the Office of the Attorney General after a formal case is initiated, while investigation or discovery is underway, while a hearing is conducted, and before the preliminary order of the hearing officer is reviewed by the Attorney General (if a hearing officer's preliminary order is reviewed). (1-1-95)

01. The Attorney General. (1-1-95)

a. Prohibited Contacts--Allowable Managerial Reporting. The Attorney General shall not discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or other staff involved in the investigation or prosecution of the case. The Attorney General may request periodic progress reporting on staff preparation. For example, the Attorney General may ask whether the staff will be prepared to present its case by a given date, but cannot inquire about the substance of the staff's case. (1-1-95)

b. Allowed Discussions. The Attorney General may discuss the substance of the contested case with deputy attorneys general and staff who are not involved in the investigation or prosecution of the contested case. The Attorney General may discuss the substance of the contested case with the hearing officer assigned to the case. (1-1-95)

02. Deputy Attorneys General. (1-1-95)

a. Investigative/Prosecutorial Attorneys. No deputy attorney general involved in the investigation or prosecution of a contested case shall discuss the substance of the contested case ex parte with the Attorney General, a hearing officer assigned to hear the contested case, or with any deputy attorney general assigned to advise or assist the Attorney General or hearing officer assigned to hear the contested case. (1-1-95)

b. Advisory Attorneys. No deputy attorney general assigned to advise or assist the Attorney General or hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. A deputy attorney general assigned to advise or assist the Attorney General or hearing officer may discuss the substance of the contested case with the hearing officer or Attorney General. (1-1-95)

03. Other Staff. (1-1-95)

a. Investigative/Prosecutorial Staff. No staff involved in the investigation or prosecution of the

contested case shall discuss the substance of the contested case ex parte with the Attorney General, a hearing officer assigned to hear the contested case, or with any deputy attorney general assigned to advise or assist the Attorney General or hearing officer assigned to hear the contested case. (1-1-95)

b. Advisory Staff. No staff assigned to advise or assist the Attorney General or hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. Staff assigned to advise or assist the Attorney General or hearing officer may discuss the substance of the contested case with the hearing officer or Attorney General. (1-1-95)

04. Hearing Officers. No hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. Hearing officers may discuss the substance of the contested case with deputy attorneys general assigned to advise or assist the hearing officer. Hearing officers may discuss the substance of the contested case with the Attorney General. (1-1-95)

424. HEARING OFFICERS (RULE 424).

No hearing officer may discuss the substance of a contested case ex parte with any deputy attorney general or staff involved in the investigation or prosecution of the contested case at any stage of the consideration of the contested case or pending judicial review of the decision in the contested case. A hearing officer may consult with any other hearing officer and with the Attorney General. A hearing officer may consult with a deputy attorney general assigned to advise or assist the hearing officer. The Attorney General may appoint as a hearing officer a deputy attorney general who will advise or assist the Attorney General in consideration of the contested case. (1-1-95)

425. ATTORNEY GENERAL'S CONSIDERATION OF PRELIMINARY ORDER (RULE 425).

This rule sets forth procedures to be followed by the Attorney General, deputy attorneys general, staff, and hearing officers if the Attorney General has accepted the hearing officer's preliminary order for discretionary review. (1-1-95)

01. The Attorney General. In considering the hearing officer's preliminary order, the Attorney General may consult with deputy attorneys general assigned to advise or assist the Attorney General and with staff that did not participate in the investigation or prosecution of the contested case. The Attorney General may consult with the hearing officer that heard the contested case and prepared the preliminary order or other hearing officers. (1-1-95)

02. Deputy Attorneys General. (1-1-95)

a. Investigative/Prosecutorial Attorneys. No deputy attorney general involved in the investigation or prosecution of a contested case shall consult with the Attorney General considering the hearing officer's preliminary order. (1-1-95)

b. Advisory Attorneys. A deputy attorney general assigned to advise or assist the Attorney General in consideration of the contested case may consult with the Attorney General in preparation for or while the Attorney General is considering the hearing officer's preliminary order. (1-1-95)

03. Other Staff. (1-1-95)

a. Investigative/Prosecutorial Staff. No staff involved in the investigation or prosecution of the contested case shall consult with the Attorney General in the Attorney's General consideration of the preliminary order. (1-1-95)

b. Advisory Staff. Any staff assigned to advise or assist the Attorney General may consult with the Attorney General at the Attorney General's direction. (1-1-95)

04. Hearing Officers. No hearing officer shall consult with any person other than the Attorney General or another deputy assigned to advise the Attorney General during the Attorney General's consideration of the hearing officer's preliminary order. (1-1-95)

426. -- 499. (RESERVED)

Part 3. Rules 500 through 699 -- Post-Pleading Procedure

a. Rules 500 through 509 -- Alternative Dispute Resolution (ADR)

500. ADOPTION BY REFERENCE OF RULES ADDRESSING ALTERNATIVE DISPUTE RESOLUTION (ADR) (RULE 500).

Rules 500 through 502 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.500 through 04.11.01.502, addressing alternative dispute resolution (ADR), are hereby adopted by reference. (1-1-95)

501. -- 509. (RESERVED)

b. Rules 510 through 519 -- Prehearing Conferences

510. ADOPTION OF REFERENCE OF RULES ADDRESSING PREHEARING CONFERENCES (RULE 510).

Rules 510 through 514 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.510 through 04.11.01.514, addressing prehearing conferences, are hereby adopted by reference. (1-1-95)

511. -- 519. (RESERVED)

c. Rules 520 through 539 -- Discovery -- Related Prehearing Procedures

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized by these rules in contested cases are: (1-1-95)

a. Depositions; (1-1-95)

b. Production requests or written interrogatories; and (1-1-95)

c. Requests for admission. (1-1-95)

02. Scope of Discovery. Unless otherwise provided by statute, rule, order or notice, the scope of discovery is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (1-1-95)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

Parties may agree between or among themselves to provide for discovery. If the applicant for a certificate of public advantage consents to being subject to discovery, the hearing officer may issue an order scheduling discovery based upon that consent. Any party that propounds discovery to the applicant has by operation of this rule also consented to discovery of its case according to the terms of the hearing officer's order compelling discovery or subsequent orders addressing discovery. (1-1-95)

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties have a right of discovery of all other parties according to Rule 521. (1-1-95)

523. DEPOSITIONS (RULE 523).

Whenever the parties involved have agreed to or have consented to discovery according to these rules, depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, rule or order. (1-1-95)

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Whenever the parties involved have agreed to or consented to discovery according to these rules, production requests or written interrogatories and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, rule or order. (1-1-95)

525. ANSWERS TO DISCOVERY IN PUBLIC FILES (RULE 525).

Answers to discovery in the possession of the Office of the Attorney General are in the public domain. Answers are subject to inspection, examination and copying under the public records law, Sections 9-337 through 9-348, Idaho Code. (1-1-95)

526. (RESERVED)

527. ADOPTION BY REFERENCE OF RULES RELATING TO ANSWERS TO PRODUCTION REQUESTS, FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS, EXHIBIT NUMBERS, AND PREPARED TESTIMONY AND EXHIBITS (RULE 527).

Rules 527 through 530 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.527 through 04.11.01.530, addressing answers to production requests, filing and service of discovery-related documents, exhibit numbers, and prepared testimony and exhibits, are hereby adopted by reference. (1-1-95)

528. -- 530. (RESERVED)

531. SANCTIONS FOR FAILURE TO OBEY ORDER SCHEDULING DISCOVERY (RULE 531).

The hearing officer may impose all sanctions recognized by statute or rule for failure to comply with an order scheduling discovery. In particular, whether or not the applicant has consented to discovery, the hearing officer may find that the applicant has not met its burden of persuasion of the benefits of the cooperative agreement if the applicant will not comply with reasonable requests for discovery on material relevant to its application. (1-1-95)

532. -- 539. (RESERVED)

**d. Rules 540 Through 549 -- Particular Rules for Issuance
or Revocation of a Certificate of Public Advantage**

540. TIMETABLE FOR PROCESSING APPLICATION FOR CERTIFICATE OF PUBLIC ADVANTAGE (RULE 540).

Section 39-4903(3), Idaho Code, provides that the Attorney General must grant or deny an application for a certificate of public advantage within sixty (60) days of the date of the filing of the application. The Attorney General interprets this timetable as establishing an applicant's right to receive a decision on the merits within sixty (60) days, not as divesting the Attorney General of jurisdiction to make a decision more than sixty (60) days after filing the application. Furthermore, the Attorney General interprets the applicant's right to a decision in sixty (60) days as a right that an applicant may waive in writing. (1-1-95)

541. APPLICANTS' BURDENS OF PROOF (RULE 541).

01. Burden of Introduction of Evidence on Benefits. Applicants for a certificate of public advantage bear the burden of introduction of evidence that their cooperative agreement provides one (1) or more of the following benefits: (1-1-95)

- a. The quality of health care provided to consumers in the state will be enhanced. (1-1-95)
- b. A hospital, if any, and other health care facilities that customarily serve the communities in the area likely affected by the cooperative agreement will be preserved. (1-1-95)
- c. Services provided by the parties to the cooperative agreement will gain cost efficiency. (1-1-95)
- d. The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve. (1-1-95)
- e. Duplication of health care resources in the area likely affected by the cooperative agreement will be

avoided. (1-1-95)

02. Burden of Persuasion That Benefits Outweigh Disadvantages. Applicants for a certificate of public advantage bear the burden of persuasion by clear and convincing evidence that their agreement produces one (1) or more of the benefits listed in Subsection 541.01 and that these benefits outweigh any disadvantages attributable to a reduction in competition that may result from the agreement, including, but not limited to the following: (1-1-95)

a. The likely adverse impact, if any, on the ability of health maintenance organizations, preferred provider plans, hospital provider organizations, persons performing utilization review, or other health care payers to negotiate optimal payment and service arrangements with hospitals and other health care providers. (1-1-95)

b. Whether any reduction in competition among physicians, allied health professionals or other health care providers is likely to result directly or indirectly from the cooperative agreement. (1-1-95)

c. Whether any arrangements that are less restrictive to competition could likely achieve substantially the same benefits or a more favorable balance of benefits over disadvantages than that likely to be achieved from reducing competition. (1-1-95)

03. Relevance of Providing Supporting Information. In assessing whether the applicant has met its burden of persuasion by clear and convincing evidence that benefits of the cooperative agreement outweigh the disadvantages, the finder of fact may take into account whether the applicant supplied at hearing relevant information available to the applicant. (1-1-95)

542. APPOINTMENT OF HEARING OFFICER (RULE 542).

The demands on the time of the Attorney General will not ordinarily allow the Attorney General to hear an application. Accordingly, within seven days after the Office of the Attorney General receives either a notice of intent to file an application for a certificate of public advantage or receives an application for a certificate of public advantage, whichever comes first, the Attorney General will appoint a hearing officer to hear the case. The hearing officer will be authorized to issue a preliminary order (i.e., an order that will become final in the absence of review by the Attorney General). The hearing officer will issue a preliminary order rather than a recommended order (an order that becomes final only after review by the Attorney General) because there is not time for a hearing officer to hear a case and issue a recommended order and for the Attorney General to review a recommended order in sixty (60) days. (1-1-95)

543. ATTORNEY GENERAL'S REVIEW OF PRELIMINARY ORDER DISCRETIONARY (RULE 543).

The Attorney General's review of a preliminary order is discretionary. The Attorney General will not review a preliminary order without the applicant's written waiver of the sixty (60) day limit for deciding an application. (1-1-95)

544. ORDER GRANTING AN APPLICATION FOR A CERTIFICATE -- ISSUANCE OF CERTIFICATE (RULE 544).

01. Contents of Order. An order granting an application for a certificate of public advantage must recite the parties to the cooperative agreement, attach the cooperative agreement approved by order the as an exhibit, find that the benefits of the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the cooperative agreement, and state whether periodic written updates of the progress of the approved cooperative agreement will be required. (1-1-95)

02. Frequency of Periodic Updates. If the order requires periodic written updates, the order may require periodic reports at intervals no more frequently than ninety (90) days. (1-1-95)

03. Issuance of Certificate. The Attorney General will issue a certificate of public advantage when a preliminary order of the hearing officer granting an application for a certificate becomes final, if the preliminary order is not reviewed, or concurrently with a final order of the Attorney General granting a certificate, if the Attorney General reviews a preliminary order of the hearing officer and issues a final order granting a certificate. (1-1-95)

545. EFFECT OF ISSUANCE OF CERTIFICATE (RULE 545).

If a certificate of public advantage is issued, participants in the approved cooperative agreement are immune from civil enforcement and criminal prosecution for actions that might otherwise violate antitrust law of the state of Idaho taken in furtherance of the cooperative agreement. Nothing in the approval limits the authority of the Attorney General to initiate civil enforcement or criminal prosecution if health care providers have exceeded the scope of the cooperative agreement approved. (1-1-95)

546. RECOMMENDATION FOR REVOCATION OF CERTIFICATE -- REVIEW BY ATTORNEY GENERAL (RULE 546).

01. Staff and Other Recommendations. If the investigative/prosecutorial staff of the Attorney General recommends to the Attorney General in writing that a certificate of public advantage be revoked, revoked in part or otherwise modified because the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweigh any disadvantage attributable to any actual or potential reduction in competition resulting from the cooperative agreement, the staff shall serve a copy of the recommendation upon the parties to the agreement and upon their counsel of record for the application, if there was one. If the Office of the Attorney General receives such a recommendation in writing from the public, the Office of the Attorney General shall serve a copy of the recommendation upon the parties to the agreement and upon their counsel of record, if there was one. (1-1-95)

02. The Attorney General's Response. The Attorney General shall consider the recommendation to revoke, revoke in part or modify the certificate of public advantage and find whether the recommendation is substantial enough to warrant the initiation of a complaint to formally investigate. The Attorney General's finding that the recommendations warrant further investigation by the initiation of a complaint does not constitute a finding or conclusion on any underlying matter. (1-1-95)

547. PROCEDURE WHEN COMPLAINT ISSUED (RULE 547).

If the Attorney General accepts a recommendation to initiate a formal investigation by complaint, pursuant to Section 39-4903(12), Idaho Code, the order initiating the complaint shall revoke, revoke in part or modify the certificate of public advantage and inform the parties to the cooperative agreement that they have ten (10) days to contest the revocation, revocation in part or modification of the certificate. An order of revocation, revocation in part or modification of the certificate shall not become effective until ten (10) days have elapsed and the parties to the certificate have not contested the order. If the parties contest the order of revocation, revocation in part or modification, that order shall then be ineffective. (1-1-95)

548. PROCEDURE WHEN REVOCATION CONTESTED (RULE 548).

If a proposed revocation, revocation in part or modification of a certificate of public advantage is contested, the Attorney General shall appoint a hearing officer to hear the complaint as a contested case. The hearing officer shall issue a preliminary order deciding all issues raised by the complaint following a hearing on the merits or a settlement. (1-1-95)

549. TERMINATION OF COOPERATIVE AGREEMENT (RULE 549).

If a party to a cooperative agreement terminates its participation in the cooperative agreement, the party shall file a notice of termination with the Office of the Attorney General within thirty (30) days after the termination takes effect. If all parties to the cooperative agreement terminate their participation in the agreement, the Attorney General shall revoke the certificate of public advantage for the agreement. (1-1-95)

e. Rules 550 through 599 -- Hearings -- Miscellaneous Procedure

550. ADOPTION BY REFERENCE OF RULES ADDRESSING HEARINGS AND MISCELLANEOUS PROCEDURE (RULE 550).

Rules 550 through 566 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.550 through 04.11.01.566, addressing hearings and miscellaneous procedure, are hereby adopted by reference. (1-1-95)

551. -- 599. (RESERVED)

f. Rules 600 through 609 -- Evidence in Contested Cases

600. ADOPTION BY REFERENCE OF RULES ADDRESSING EVIDENCE (RULE 600).

Rules 600 through 606 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.600 through 04.11.01.606, addressing evidence, are hereby adopted by reference. (1-1-95)

601. -- 609. (RESERVED)

g. Rules 610 through 649 -- Settlements

610. ADOPTION BY REFERENCE OF RULES ADDRESSING SETTLEMENTS (RULE 610).

Rules 610 through 614 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.610 through 04.11.01.614, addressing settlements, are hereby adopted by reference. (1-1-95)

611. -- 649. (RESERVED)

h. Rules 650 through 699 -- Records for Decisions

650. ADOPTION BY REFERENCE OF RULES ADDRESSING RECORDS FOR DECISION (RULE 650).

Rules 650 and 651 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.650 through 04.11.01.651, addressing records for decision, are hereby adopted by reference. (1-1-95)

651. -- 699. (RESERVED)

Part 4. -- Rules 700 through 999 -- Preliminary Orders and Review of Preliminary Orders

a. Rules 700 through 709 -- Defaults

700. ADOPTION BY REFERENCE OF RULES ADDRESSING DEFAULTS (RULE 700).

Rules 700 through 702 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.700 through 04.11.01.702, addressing defaults, are hereby adopted by reference. (1-1-95)

701. -- 709. (RESERVED)

b. Rules 710 through 780

Interlocutory, Preliminary and Final Orders -- Review or Stay of Orders

710. ADOPTION BY REFERENCE OF RULES ADDRESSING INTERLOCUTORY, PRELIMINARY AND FINAL ORDERS AND REVIEW OR STAY OF ORDERS (RULE 710).

Rules 710, 711, 730, 740, 750, 760, 770, and 780 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.710, 04.11.01.711, 04.11.01.730, 04.11.01.740, 04.11.01.750, 04.11.01.760, 04.11.01.770 and 04.11.01.780, addressing interlocutory, preliminary and final orders and review or stay of orders, are hereby adopted by reference. (1-1-95)

711. -- 789. (RESERVED)

c. Rules 790 through 999 -- Appeal to District Court

790. ADOPTION BY REFERENCE OF RULES ADDRESSING APPEAL TO DISTRICT COURT (RULE 790).

Rules 790 and 791 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.790 and 04.11.01.791, addressing appeal to district court, are hereby adopted by reference. (1-1-95)

791. -- 999. (RESERVED)

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