IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE

Division of Management Services

16.05.03 – Contested Case Proceedings and Declaratory Rulings

Who does this rule apply to?
Anyone who represents themselves or an agency that elects to appeal a Department Action or inaction.

What is the purpose of this rule?
These rules establish standards for petitions for rulemaking and declaratory rulings, and the conduct of contested cases.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Juvenile Proceedings -
Early Intervention Services:
- Section 16-107, Idaho Code – Responsibilities of the Department of Health and Welfare

Public Assistance and Welfare -
Payment for Skilled and Intermediate Services:
- Section 56-133, Idaho Code – Administrative Review Process
- Section 56-135, Idaho Code – Adoption of Rules

Pubic Assistance Law:
- Section 56-202, Idaho Code – Duties of Director of State Dept. of Health and Welfare
- Section 56-204A, Idaho Code – Services for Children
- Section 56-216, Idaho Code – Appeal and Fair Hearing

Department of Health and Welfare:
- Section 56-1003, Idaho Code – Powers and Duties of the Director
- Section 56-1004, Idaho Code – Director – Additional Powers and Duties
- Section 56-1005, Idaho Code – Board – Composition – Officers – Compensation – Powers – Subpoena – Depositions – Review – Rules

Where can I find information on Administrative Appeals?
Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings."

How do I request public records?
Unless exempted, all public records are subject to disclosure by the Department that will comply with Title 74, Chapter 1, Idaho Code, upon requests. Confidential information may be restricted by state or federal law, federal regulation, and IDAPA 16.05.01, "Use and Disclosure of Department Records."

Who do I contact for more information on this rule?

Idaho Department of Health and WelfareAttn: Administrative Procedures Section
Administrative Procedures SectionP.O. Box 83720
450 West State Street, 10th floorBoise, ID 83720-0036
Boise, ID 83720-0036
Phone: (208) 334-5564Email: APS@dhw.idaho.gov
Fax: (208) 639-5741, Attn: APSWebpage:
https://publicrecordsrequest.dhw.idaho.gov

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000. LEGAL AUTHORITY.
The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings under Sections 16-107, 56-133, 56-135, 56-202, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code. (5-8-09)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." (5-8-09)

02. Scope. These rules establish standards for petitions for rulemaking and declaratory rulings, and the conduct of contested cases. (5-8-09)

002. ACCESS TO RECORDS OF INDIVIDUALS WITH DEVELOPMENTAL OR MENTAL DISABILITIES.
The state Protection and Advocacy System established under 42 USC 15041, et seq., and 42 USC 10801 et seq., 29 USC 794e, et seq., and 42 USC 300d as designated by the Governor has access to records of individuals who are clients of the system maintained by any program or institution of the Department if the individual has authorized or is unable to authorize the system to have such access, or does not have a legal guardian, conservator or other legal representative. (3-28-18)

003. ADMINISTRATIVE APPEALS.
All contested cases are governed by the provisions of this chapter. The Board of Health and Welfare and the Director of the Department of Health and Welfare find that the provisions of IDAPA 04.11.01.000, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable for contested cases involving the programs administered by the Department, because of the specific requirements of federal and state law regarding hearing processes, and the complexity of the rules at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-11-06)

004. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.
For the purposes of this chapter, the following definitions and abbreviations apply. (3-28-18)

01. Administrative Review. An informal review by a Division Administrator or designee, to determine whether a Department decision is correct. (5-8-09)

02. Appellant. A person or entity who files an appeal of Department action or inaction. (3-30-01)

03. Board. The Idaho Board of Health and Welfare. (3-30-01)

04. Complainant. A person or individual who has a grievance regarding Youth Empowerment Services (YES). (3-28-18)

05. Cost Report. A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-28-18)

06. Cost Settlement. Final determinations of payment, based on cost reports, to a Medicaid-enrolled provider. (3-28-18)

07. Department. The Idaho Department of Health and Welfare. (3-30-01)

08. Director. The Director of the Department of Health and Welfare. (3-30-01)

09. Hearing Officer. The person designated to preside over a particular hearing and any related proceedings. (3-30-01)

10. IPV. Intentional program violation. (3-30-01)

11. Intervenor. Any person, other than an appellant or the Department, who requests to be admitted as

a party in an appeal. (3-30-01)

12. **Managed Care Entity (MCE)**. An entity contracted by Medicaid to administer Medicaid services, which may be a Prepaid Ambulatory Health Plan (PAHP), Prepaid Inpatient Health Plan (PIHP), or other Managed Care Organization (MCO) as defined in 42 CFR 438.2. As used in these rules, the term does not include service brokers or entities providing non-emergency medical transportation (NEMT) services. (3-28-18)

13. **Party**. An appellant, the Department and an intervenor, if intervention is permitted. (3-30-01)

14. **Youth Empowerment Services (YES) Program Participant**. A YES program participant, is an Idaho resident with a Serious Emotional Disturbance who: (3-28-18)

a. Is under the age of eighteen (18); (3-28-18)

b. Has a mental health condition described in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) and diagnosable by a qualified professional operating within the scope of their practice as defined by Idaho state law; and (3-28-18)

c. Has a substantial functional impairment that is measured by and documented through the use of a standardized instrument conducted or supervised by a qualified clinician. (3-28-18)

d. A substance use disorder or development disorder alone does not constitute an eligible diagnosis, although one (1) or more of these conditions may coexist with an eligible mental health diagnosis. (3-28-18)

011. -- 039. (RESERVED)

040. PETITION FOR ADOPTION OF RULES.
Under Section 67-5230, Idaho Code, any person may file a written petition with the Administrative Procedures Section requesting the promulgation, amendment, or repeal of a rule. The petition must include a name, address, and phone number to which the Department may respond; list the rule in question and explain the reasons for the petition; and include the suggested language of the rule. The Director will initiate rulemaking proceedings or deny the petition in writing within twenty-eight (28) days. (4-11-06)

041. -- 049. (RESERVED)

050. PETITION FOR DECLARATORY RULING.
Under Section 67-5232, Idaho Code, any person may file a written petition to the Director through the Administrative Procedures Section for a declaratory ruling as to the applicability of any statute or rule of the Department to an actual set of facts involving that person. (4-11-06)

051. CONTENTS OF PETITION FOR DECLARATORY RULING.
A petition for a declaratory ruling must identify that it is a request for a declaratory ruling under this section of rule; the specific statute, or rule with respect to which the declaratory ruling is requested; a complete description of the situation for which the declaratory ruling is requested; and the specific ruling requested. The petition must include the date of the petition, the name, address, and phone number of the petitioner and whether the petition is made on behalf of a corporation or organization. The petition must identify the manner by which the statute or rule interferes with, impairs, or threatens to interfere with or impair the legal rights, duties, licenses, immunities, interests, or privileges of the petitioner. (4-11-06)

052. DISPOSITION OF PETITION FOR DECLARATORY RULING.
The Director will issue a final declaratory ruling in writing within seventy (70) days after receipt of the petition or within such additional time as may be required. The Director may decline to issue a declaratory ruling in the following circumstances: (4-11-06)

01. **Incomplete**. When a petition fails to meet the requirements set forth in Section 051 of these rules; (3-30-01)

02. Contested Case. When the issue set forth in the petition would be more properly addressed as a contested case, such as where there is a reasonable dispute as to the relevant facts, or where witness credibility is an issue; (3-30-01)

03. No Legal Interest. When the petition fails to state a sufficient or cognizable legal interest to confer standing; (3-30-01)

04. Others Affected. When the issue presented would substantially affect the legal rights, license, privileges, immunities, or interests of parties other than petitioners; or (3-30-01)

05. Beyond Authority. When the ruling requested is beyond the authority of the Department. (3-30-01)

053. -- 099. (RESERVED)

100. DEPARTMENT RESPONSIBILITY.
When a decision is appealable, the Department will advise the individual or provider in writing of the right and method to appeal and the right to be represented. (4-11-06)

101. FILING OF APPEALS.

01. Appeals. Appeals must be filed in writing and state the appellant's name, address, and phone number, and the remedy requested, unless otherwise provided in these rules. Appeals should be accompanied by a copy of the decision notice that is the subject of the appeal and state the reason for disagreement with the Department's action. (3-28-18)

02. Time Limits for Filing Appeal. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision have twenty-eight (28) days from the date the decision is mailed to file an appeal. An appeal is filed when it is received by the Department or postmarked within the time limits provided in the decision notice, or in these rules. (3-28-18)

102. NOTICE OF HEARING.
All parties in an appeal will be notified of a hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The hearing officer may provide a shorter advance notice upon request of a party or for good cause. The notice will identify the time, place and nature of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of any statutes and rules involved; the issues involved; and the right to be represented. The notice must identify how and when documents for the hearing will be provided to all parties. (4-11-06)

103. PREHEARING CONFERENCE.

01. Prehearing Conference. The hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference. The purpose of the prehearing conference is to: (3-28-18)

a. Formulate or simplify the issues; (3-28-18)

b. Obtain admissions or stipulations of fact and documents; (3-28-18)

c. Identify whether there is any additional information that had not been presented to the Department with good cause; (3-28-18)

d. Arrange for exchange of proposed exhibits or prepared expert testimony; (3-28-18)

e. Limit the number of witnesses; (3-28-18)

f. Determine the procedure at the hearing; and (3-28-18)

g. Determine any other matters that may expedite the orderly conduct and disposition of the proceeding. (3-28-18)

02. Exception to Prehearing Conference. The prehearing conference cannot be mandatory for any Division of Welfare or Division of Medicaid benefit programs. The following apply: (3-28-18)

a. Participation in the prehearing conference is optional for individuals seeking to appeal for any benefit through the Division of Welfare or Division of Medicaid; and (3-28-18)

b. A default order may not be entered for cases in which an individual does not participate in the prehearing conference involving benefits through the Division of Welfare, or Division of Medicaid. (3-28-18)

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

105. DISPOSITION OF CASE WITHOUT A HEARING.
Any contested case may be resolved without a hearing on the merits of the appeal by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. The hearing officer must dismiss an appeal that is not filed within the time limits set forth in these rules. (4-11-06)

106. DEFAULT.
Unless otherwise provided by statute or rule, if a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer must enter a proposed default order against that party. The default order must be set aside if, within fourteen (14) days of the date of mailing, that party submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. (3-28-18)

107. INTERVENTION.
Persons other than the original parties to an appeal who are directly and substantially affected by the proceeding may participate if they first secure an order from the hearing officer granting leave to intervene. The granting of leave to intervene is not to be construed as a finding or determination that the intervenor is or may be a party aggrieved by any ruling, order or decision of the Department for purposes of judicial review. (4-11-06)

108. CONSOLIDATED HEARING.
When there are multiple appeals or a group appeal involving the same change in law, rules, or policy, the hearing officer will hold a consolidated hearing. (5-8-09)

109. -- 119. (RESERVED)

120. DISCOVERY.
Except for hearings involving Section 56-1005(5), Idaho Code, prehearing discovery is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The hearing officer may order production of this information if a party refuses to comply after receiving a written request. The hearing officer will issue such other orders as are needed for the orderly conduct of the proceeding. Nothing in Section 120 limits the authority of the Director provided in Section 56-227C, Idaho Code. (4-11-06)

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

122. FILING OF DOCUMENTS IN AN APPEAL.
All documents intended to be used as exhibits must be filed with the hearing officer. Such documents will be provided to every party at the time they are filed with the hearing officer, in person, by first class mail, or as otherwise ordered by the hearing officer. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties will accompany all documents when they are filed with the hearing officer. (3-28-18)

123. REPRESENTATION.

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

124. RESERVED.

125. INTERPRETERS.
If necessary, an interpreter will be provided by the Department. (4-11-06)

126. -- 129. (RESERVED)

130. OPEN HEARINGS.
All contested case hearings are open to the public, unless ordered closed in the discretion of the hearing officer due to the sensitive nature of the hearing. The hearing officer can order that individuals be identified by initials or an alias if necessary to protect their privacy. At the discretion 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)

131. AUTHORITY OF HEARING OFFICER.
The hearing officer will consider only information that was available to the Department at the time the decision was made. If appellant shows that there is additional relevant information that was not presented to the Department with good cause, the hearing officer will remand the case to the Department for consideration. No hearing officer has the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. The hearing officer must defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer will not retain jurisdiction on any matter after it has been remanded to the Department. (4-11-06)

132. BURDEN OF PROOF -- INDIVIDUAL BENEFIT CASES.
The Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification; revoke or limit a license; or to contest a tobacco violation under Sections 39-5705 and 39-5708, Idaho Code. In a child support matter, the Department must first establish that arrearages are sufficient for child support enforcement action. The appellant has the burden of proof on all other issues, including establishing eligibility for a program, service or license; seeking an exemption required due to criminal history or abuse registry information; or seeking to avoid license suspension, asset seizure, or other enforcement actions for failure to pay child support. (5-8-09)

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

134. EVIDENCE.
Under Section 67-5251, Idaho Code, the hearing is informal and technical rules of evidence do not apply, except that irrelevant, immaterial, incompetent, unduly repetitious evidence, evidence excludable on constitutional or statutory grounds, or evidence protected by legal privilege is excluded. Hearsay evidence will be received if it is relevant to a matter in dispute and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs, or corroborates competent evidence. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Unless otherwise stated in statute, rule, or regulation, the evidentiary standard is proof by a preponderance of the evidence. (4-11-06)

135. DISCRETIONARY JUDICIAL NOTICE.
Notice may be taken of judicially cognizable facts by the hearing officer or authority on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties will 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 will be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (4-11-06)

136. MANDATORY JUDICIAL NOTICE.
The hearing officer will take judicial notice, on its own motion or on the motion of any party, of the following admissible, valid and enforceable materials: Rules of the Department and other state agencies; Federal regulations; State plans of the Department; The Constitutions and statutes of the United States and Idaho; Public records; and Such other materials that a court of law must judicially notice. (4-11-06)

137. HEARING RECORD.
The hearing officer must arrange for a record to be made of a hearing. The hearing must be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record must be transcribed at the expense of the party requesting a transcript and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. The Department must maintain the complete record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. (4-11-06)

138. DECISION AND ORDER.
A preliminary order must be issued by the hearing officer not later than thirty (30) days after the case is submitted for decision. The order must include specific findings on all major facts at issue; a reasoned statement in support of the decision; all other findings and recommendations of the hearing officer; a preliminary decision affirming, reversing or modifying the action or decision of the Department, or remanding the case for further proceedings; and the procedures and time limits for filing requests for review of the order. Unless otherwise provided by a statute governing a particular program, motions for reconsideration of a preliminary order will not be accepted. (4-11-06)

139. -- 149. (RESERVED)

150. REVIEW OF PRELIMINARY ORDERS BY DEPARTMENT.
Unless otherwise provided in these rules, in cases under the jurisdiction of the Department, either party may file a request for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request must identify all legal and factual bases of disagreement with the preliminary order. The Director or designee must allow for briefing by the parties and determines whether oral argument will be allowed. The Director or designee determines whether a transcript of the hearing is needed and if so, one will be provided by the party who requests review of the preliminary order. The Director or designee must exercise all of the decision-making power they would have had if they had presided over the hearing. (3-28-18)

151. PETITION FOR REVIEW BY BOARD OF HEALTH AND WELFARE.
In cases under the jurisdiction of the Board, either party may file a petition for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request must identify all legal and factual bases of disagreement with the preliminary order. The Administrative Procedures Section will establish a schedule for the submission of briefs and if allowed, oral argument. The Board chair or designee will determine whether a transcript of the hearing is needed and, if so, one will be provided by the party who requests review of the preliminary order. Board members will exercise all of the decision-making power they would have had if they had presided over the hearing. (5-8-09)

152. FINAL ORDER.
The Board, Director or designee may affirm, modify, or reverse the order, or remand the matter to the hearing officer for further proceedings. The decision informs the parties of the procedure and time limits for filing appeals with the district court. Motions for reconsideration of a final order will not be accepted. (4-11-06)

153. SERVICE OF PRELIMINARY AND FINAL ORDERS.
Orders will be deemed to have been served when copies are mailed to all parties of record or their attorneys. (4-11-06)

154. MAINTENANCE OF ORDERS.
All final orders of the Board or the Director will be maintained by the Administrative Procedures Section and made available for public inspection for at least six (6) months, or until all appeals are concluded, whichever is later. (4-11-06)

155. EFFECT OF PETITION FOR JUDICIAL REVIEW.

The filing of a petition for judicial review will not stay compliance with a final order or suspend the effectiveness of the order, unless otherwise ordered or mandated by law. (4-11-06)

156. -- 198. (RESERVED)

199. SPECIFIC CONTESTED CASE PROVISIONS.
The following sections of this chapter provide special requirements of various Department divisions or programs that supersede the general provisions of these rules to the extent that they are different. (3-28-18)

200. DIVISION OF WELFARE: APPEALS.
The provisions of Sections 200 through 299 of these rules govern the conduct of individual benefit hearings to determine eligibility for benefits or services in the Division of Welfare and its programs. (3-28-18)

01. Division of Welfare Programs. The following programs are covered under the following chapter of rules: (3-28-18)

a. IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children"; (3-28-18)

b. IDAPA 16.03.03, "Child Support Services"; (3-28-18)

c. IDAPA 16.03.04, "Idaho Food Stamp Program"; (3-28-18)

d. IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)"; (3-28-18)

e. IDAPA 16.03.08, "Temporary Assistance for Families in Idaho (TAFI) Program"; (3-28-18)

f. IDAPA 16.04.14, "Low-Income Home Energy Assistance Program"; (3-28-18)

g. IDAPA 16.06.12, "Idaho Child Care Program (ICCP)." (3-28-18)

02. Methods for Filing Appeals. Requests for appeals may be made with the Division of Welfare using any one (1) of the following listed in this subsection: (3-20-20)

a. Via the Department's internet website: (3-28-18)

b. By telephone; (3-28-18)

c. Via mail; (3-28-18)

d. In person; and (3-28-18)

e. Other commonly available electronic means. (3-28-18)

201. DIVISION OF WELFARE: TIME FOR FILING APPEAL.
A decision issued by the Department in a Division of Welfare benefit program will be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps has ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified in the particular program within thirty (30) days after the action would have been taken if the Department had acted in a timely manner. (3-28-18)

202. DIVISION OF WELFARE: INFORMAL CONFERENCE.
An appellant or representative has the right to request an informal conference with the Department or Community Action Agency before the hearing date. This conference may be used to resolve the issue informally or to provide the appellant with information about the hearing or actions. The conference will not affect the appellant's right to a hearing or the time limits for the hearing. After the conference, the hearing will be held unless the appellant withdraws the appeal, or the Department withdraws the action contested by the appellant. (5-8-09)

203. DIVISION OF WELFARE: WITHDRAWAL OF AN APPEAL.
An appellant or representative may withdraw an appeal upon request to the hearing officer using any one (1) of the methods listed in Section 200 of these rules. (3-28-18)

204. DIVISION OF WELFARE: TIME LIMITS FOR COMPLETING HEARINGS.
The Department must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received, unless as provided in Subsections 204.01 through 204.03 of this rule. (3-28-18)

01. Community Spouse Resources Allowance. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing will be held within thirty (30) days from the date the hearing request is received. (3-28-18)

02. Food Stamps. When the hearing relates to Food Stamps, the hearing, the decision of the hearing, and the notice regarding the outcome of the hearing will be completed within sixty (60) days from the date the hearing request is received. (3-28-18)

03. Expedited Hearings. The Department will expedite hearing requests from appellants for the following reasons: (3-28-18)

a. Migrant farm workers who are planning to move before the hearing decision would normally be reached; or (3-28-18)

b. Individuals requesting an expedited fair hearing will be provided a hearing as required according to 42 CFR 431.224. (3-28-18)

205. DIVISION OF WELFARE: APPEAL OF AUTOMATIC ADJUSTMENTS.
An appeal will be dismissed if the hearing officer determines that the sole issue is an automatic grant adjustment, change in rule that affects benefit amount or eligibility, or reduction of Medicaid services under state or federal law. (5-8-09)

206. (RESERVED)

207. DIVISION OF WELFARE: POSTPONEMENT OF FOOD STAMP HEARINGS.
An appellant may request, and be granted a postponement of a hearing, not to exceed thirty (30) days. The time limit for the Department's response will be extended for as many days as the hearing is postponed. (5-8-09)

208. -- 249. (RESERVED)

250. DIVISION OF WELFARE: FOOD STAMPS DISQUALIFICATION HEARINGS.
A disqualification hearing will be scheduled when the Department has evidence that an individual has allegedly committed one (1) or more acts of intentional program violations (IPV). (5-8-09)

251. DIVISION OF WELFARE: COMBINING DISQUALIFICATION HEARING AND BENEFIT HEARING.
The hearing officer must consolidate a hearing regarding benefits or overpayment and a disqualification hearing if the issues are the same or related. The appellant must be notified that the hearings will be combined. (5-8-09)

252. DIVISION OF WELFARE: RIGHT NOT TO TESTIFY.
The hearing officer must advise the appellant that they may refuse to answer questions during a disqualification hearing. (5-8-09)

253. DIVISION OF WELFARE: FAILURE TO APPEAR.
If an appellant or representative fails to appear at a disqualification hearing or cannot be located, the hearing will be conducted in their absence. The Department must present proof that advance notice of the hearing was mailed to the appellant's last known address. The hearing officer must consider the evidence and determine if an IPV occurred

based solely on the information provided by the Department. The appellant has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. If an IPV had been established, but the hearing officer determines the appellant had good cause for not appearing, the previous decision will be void and a new hearing will be conducted. The previous hearing officer may conduct the new hearing. (5-8-09)

254. DIVISION OF WELFARE: STANDARD FOR DETERMINING INTENTIONAL PROGRAM VIOLATIONS.
The determination that an intentional program violation has been committed must be established by clear and convincing evidence that the appellant committed or intended to commit an IPV. (5-8-09)

255. -- 297. (RESERVED)

298. DIVISION OF WELFARE: CHILD SUPPORT SERVICES.
In a child support enforcement proceeding, an individual or a representative may request a hearing after being served notice of license suspension or notice of an asset withholding order from the Financial Institution Data Match (FIDM) process. (3-28-18)

01. Time Limits for Requesting a Hearing. (3-28-18)

a. License Suspension. The licensee has twenty-one (21) days from the date of service of the notice either by personal service or certified mail, to request a hearing by filing with the Department to contest the suspension of license or licenses. A timely request for a hearing stays the suspension of the license or licenses through the issuance of the order by the Department. The Department will notify the licensing authority if the suspension is vacated or stayed. (3-28-18)

b. Financial Institution Data Match (FIDM). The obligor or co-owner has fourteen (14) days from the date of mailing the notice of asset withholding order to request a hearing in writing to contest the asset being withheld. Upon receiving a timely request for hearing, the Department will notify the financial institution that it must continue to hold the asset until an order is issued and the Department provides instructions for the disposition of the asset. If the obligor or co-owner does not file a timely request for hearing, the Department will notify the financial institution to promptly surrender the amount of the asset that has been frozen to the Department. (3-28-18)

02. Time Limits for Completing Hearings. The Department will hold an administrative hearing within thirty (30) days from the day the Department receives the request for hearing to contest asset withholding from the FIDM process. (3-28-18)

03. Default. (3-28-18)

a. Licensing Authority. If the licensee fails to make a timely request for a hearing or fails to appear at the hearing without good cause, the Department will issue an order of Default suspending the license or licenses. On receipt of the final order from the Department, the licensing authority will suspend the license effective the date the order became final, without additional review or hearing. (3-28-18)

b. Financial Institution. If the obligor or co-owner of the asset fails to appear at the hearing without good cause, the Department will issue an order of Default upholding the asset withholding order. On receipt of the final order from the Department, the financial institution will promptly surrender the amount of the asset that has been frozen to the Department. (3-28-18)

04. Time for Filing an Appeal. An order of suspension or asset withholding order issued by a hearing officer of the Department will be final and conclusive between the parties unless a petition for review is filed within twenty-eight (28) days with the district court. (3-28-18)

299. (RESERVED)

300. DIVISION OF MEDICAID: ADMINISTRATIVE REVIEWS FOR PROVIDERS AND FACILITIES.

01. Written Request. An action relating to audited cost reports or Medicaid cost settlement calculations required by administrative rule is final and effective unless the provider or facility requests in writing an administrative review within thirty (30) days after the notice is mailed. The request must: (3-28-18)

a. Be signed by the licensed administrator of the facility or by the provider; (3-28-18)

b. Identify the challenged decision; (3-28-18)

c. State specifically the grounds for its contention that the decision was erroneous; and (3-28-18)

d. Include copies of any documentation on which the facility or provider intends to rely to support its position. (3-28-18)

02. Review Conference. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within thirty (30) days after the request for the administrative review is received. The thirty (30) day requirement may be extended when both parties agree in writing to a specified later date. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled within thirty (30) days of the initial conference. This second session date may be extended when both parties agree in writing to a specified later date. (3-28-18)

03. Department Decision. The Department will provide a written decision to the facility or provider. (3-28-18)

301. DIVISION OF MEDICAID: SCOPE OF APPEAL HEARING.
If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review will be admissible in the appeal hearing. (3-28-18)

302. DIVISION OF MEDICAID: APPEALS PROCESS FOR MEDICAID PARTICIPANTS.

01. Medicaid Participant Appeals. Medicaid participants whose appeals are not related to services delivered through a Managed Care Entity (MCE), as defined in Section 010 of these rules, must use the appeals process provided in Sections 101 through 199 of these rules. (3-28-18)

02 Medicaid Participant Appeals Related to Services Delivered Through Managed Care Entity. (3-28-18)

a, Participants whose appeals are related to services delivered through a managed care entity must utilize the complaint, grievance, and appeal process required by the Department and the managed care contractor. (3-28-18)

b. Participants whose appeals are related to services delivered through a Managed Care Entity (MCE) must follow the appeals process in 42 CFR 438.402 through 42 CFR 438.408. (3-28-18)

03. Expedited Fair Hearings for Medicaid Participants. The Department will provide a process for expedited fair hearings for Medicaid participants in accordance with 42 CFR Part 438 or 431, as applicable. (3-28-18)

303. -- 399. (RESERVED)

400. DIVISION OF HEALTH: LABORATORIES.
A notice of grounds for denial, suspension, revocation or renewal becomes final and effective unless the applicant or responsible party files a written appeal by registered or certified mail within fourteen (14) days of receipt of the notice. A hearing will be held not more than twenty-eight (28) days from receipt of the appeal. The applicant or responsible person will receive at least fourteen (14) days of notice of the hearing date. If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered. (4-11-06)

401. DIVISION OF HEALTH: REPORTABLE DISEASES.
An order for isolation or quarantine is a final agency action as set forth in Section 56-1003(7), Idaho Code. Other orders or restrictions as specified in IDAPA 16.02.10, "Idaho Reportable Diseases," become final and effective unless an appeal is filed within five (5) working days after the effective date of the order or restriction. (5-8-09)

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

02. Review. Any person directly affected by an order or restriction may file exceptions to the Director's determination, which will be reviewed by the Board. The order or restriction remains effective unless rescinded by the Board. (4-11-06)

402. DIVISION OF HEALTH: FOOD ESTABLISHMENTS.
Appeal procedures will be as provided under IDAPA 16.02.19, "Idaho Food Code," Section 861. (5-8-09)

403. -- 499. (RESERVED)

500. DIVISION OF FAMILY AND COMMUNITY SERVICES: CHILD PROTECTION CENTRAL REGISTRY ADMINISTRATIVE REVIEW.
A substantiated incident of child abuse, neglect, or abandonment will automatically become effective and be placed on the Child Protection Central Registry unless the individual identified in the notification files a request for an administrative review within twenty-eight (28) days from the date on the notification. The request for an administrative review must be mailed to the Family and Community Services (FACS) Division Administrator. (5-8-09)

01. Content of Request. The request for an administrative review must identify the notification being protested and explain the reasons for disagreement. Additional information may be provided for the Administrator's consideration. (5-8-09)

02. Administrative Review. The FACS Division Administrator will consider all available information and determine whether the incident was erroneously determined to be "substantiated." The Administrator will furnish a written decision to the individual. (5-8-09)

501. DIVISION OF FAMILY AND COMMUNITY SERVICES: INTENSIVE BEHAVIORAL INTERVENTION (IBI) ADMINISTRATIVE REVIEW.

01. Request for Administrative Review. An action relating to certification, billing, or reimbursement is final and effective unless the provider requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must be signed by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. The Department will provide a written decision to the facility or provider. (5-8-09)

02. Scope of Appeal Hearing. If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review will be admissible in the appeal hearing. (5-8-09)

502. DIVISION OF FAMILY AND COMMUNITY SERVICES: INFANT TODDLER PROGRAM - INDIVIDUAL CHILD COMPLAINTS.

01. Individual Child Complaints. Parents or providers may request a hearing if they disagree with decisions regarding the identification, evaluation, or placement of a child, or, with the provision of appropriate early intervention services. A request must be filed with the Department's Administrative Procedures Section within

twenty-eight (28) days from the date the decision is issued. The request for a hearing must identify: (3-20-20)

a. The child's name, home address, and the early intervention program serving the child; (5-8-09)

b. A statement identifying the facts and the reason for disagreement with the decision; (5-8-09)

c. The name of the provider who is serving the child; (5-8-09)

d. A proposed resolution; and (5-8-09)

e. A dated signature of the person who is submitting the request. (5-8-09)

02. Mediation. The Department must offer mediation services at Department expense, which must be held within thirty (30) days after the request for a hearing. A qualified and impartial mediator who is trained in effective mediation techniques will meet at a location convenient to both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere. (5-8-09)

a. The parties must sign a confidentiality agreement before these discussions. Information discussed in the mediation cannot be used in any subsequent proceeding. (5-8-09)

b. If there is a resolution, both parties must sign a mediation agreement, which is enforceable in state or federal court. (5-8-09)

03. Due Process Hearings. The hearing must be held and a written decision mailed within thirty (30) days from the receipt of the request for a hearing, whether or not mediation occurs. The hearing officer may bar any party from introducing a relevant evaluation or recommendation that has not been disclosed at least five (5) calendar days before the hearing, unless the other party consents. (5-8-09)

a. Current Services. Appropriate early intervention services that are being provided at the time of the decision will continue unless the parties agree otherwise. (5-8-09)

b. Initial Application. If the decision involves an application for initial services, any services that are not in dispute must be provided. (5-8-09)

503. DIVISION OF FAMILY AND COMMUNITY SERVICES: INFANT TODDLER PROGRAM - ADMINISTRATIVE COMPLAINTS.

01. Filing of Complaint. An individual or organization, including those from another State, may file a written, signed complaint against any public or private service provider, alleging a violation of the Part C program and regulations at 34 CFR Part 303. The complaint must identify what requirement has been violated and the facts upon which the complaint is based. Complaints can include an allegation that a provider failed to implement the decision after a hearing. The complaint must be filed with the Department's Administrative Procedures Section within one (1) year of the alleged violation, except in the following circumstances: (3-20-20)

a. If there is a continuing violation for that child or other children; or (5-8-09)

b. If the complaint requests reimbursement or corrective action for a violation that occurred not more than three (3) years prior to the date the complaint is received by the public agency. (5-8-09)

02. Investigation and Decision. Upon receipt, the Department has sixty (60) days, unless exceptional circumstances exist, to: (5-8-09)

a. Investigate the complaint, including conducting an independent, on-site investigation if necessary; (5-8-09)

b. Receive additional information about the complaint; (5-8-09)

c. Make an independent determination whether a violation occurred; (5-8-09)

d. Issue a written decision with findings, conclusions, and an explanation for the decision. (5-8-09)

03. Resolution. If the Department concludes that appropriate services were or are not being provided, the decision must address remedial action including, if appropriate, the award of monetary reimbursement or corrective action appropriate to the needs of the child and family, technical assistance, and negotiation. The Department must also address appropriate future services for all infants and toddlers with disabilities and their families. (5-8-09)

04. Extent of Review. No issue that is being addressed in an active hearing process can be dealt with in an administrative complaint until the conclusion of the hearing. Any issue that is not part of the hearing must be resolved within the sixty (60) day review time. Issues that have already been decided in the hearing are final and binding on the complainant. (5-8-09)

504. -- 599. (RESERVED)

600. DIVISION OF LICENSING AND CERTIFICATION: REQUEST FOR ADMINISTRATIVE REVIEW.

01. Written Request. An action relating to licensure or certification is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must: (3-28-18)

a. Be signed by the licensed administrator of the facility, or by the provider; (3-28-18)

b. Identify the challenged decision; and (3-28-18)

c. State specifically the grounds for its contention that the decision was erroneous. (3-28-18)

02. Review Conference. An administrative review conference must be held within twenty-eight (28) days of receipt of the request for the administrative review. The twenty-eight (28) day requirement may be extended when both parties agree in writing to a specified later date. The parties must clarify and attempt to resolve the issues during the administrative review conference. If the Department determines additional documentation is needed to resolve the issues, a second session of the review conference may be scheduled. (3-28-18)

03. Department Decision. The Department will provide a written decision to the facility or provider within thirty (30) days of the conclusion of the administrative review conference. (3-28-18)

601. -- 699. (RESERVED)

700. DIVISION OF BEHAVIORAL HEALTH: REQUEST FOR ADMINISTRATIVE REVIEW.

01. Written Request. An action relating to program approval is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must: (3-28-18)

a. Be signed by the program administrator of the facility; (3-28-18)

b. Identify the challenged decision; and (3-28-18)

c. State specifically the grounds for its contention that the decision was erroneous. (3-28-18)

02. Review Conference. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. The twenty-eight (28) day requirement may be extended when both parties agree in writing to a specified later date. If the Department determines that additional documentation is needed to resolve the issues, a second session of the

conference may be scheduled. (3-28-18)

03. Department Decision. The Department will provide a written decision to the facility or provider within thirty (30) days of the conclusion of the administrative review conference. (3-28-18)

701. -- 749. (RESERVED)

750. DIVISION OF BEHAVIORAL HEALTH: YOUTH EMPOWERMENT SERVICES (YES).
Contested case proceedings for non-Medicaid Youth Empowerment Services (YES) are governed by the general provisions of this chapter, unless otherwise specified in Section 751 of these rules. (3-28-18)

751. DIVISION OF BEHAVIORAL HEALTH: YOUTH EMPOWERMENT SERVICES (YES) GRIEVANCE PROCESS.

01. Grievance. Individuals, family members, or legal guardians may choose to submit a written request to participate in this grievance process regarding non-Medicaid matters related to YES services. A grievance is a statement of dissatisfaction about any matter other than an adverse benefit determination. (3-28-18)

02. Grievance Content. A grievance must include: (3-28-18)

a. The full name, mailing address, phone numbers, and e-mail contact for the individual who is the complainant using YES services; (3-28-18)

b. The full name, mailing address, phone numbers, and e-mail contact of the person submitting the grievance on behalf of the complainant; (3-28-18)

c. A detailed explanation of the decision or non-Medicaid matter related to YES services that is being contested from the perspective of the complainant; and (3-28-18)

d. Any steps that have already been taken to resolve the issue. (3-28-18)

03. Department Response to Grievance. The Department will respond to the complainant within sixty (60) days of receipt of the grievance on its findings. The grievance process may include gathering additional information from involved parties and may run concurrent to the fair hearing process. (3-28-18)

a. The Department will address concerns related to dissatisfaction with a process or a provider at the lowest or most appropriate organizational level possible. (3-28-18)

b. The Department will document the filing of the grievance and the outcome in its response to the complainant. (3-28-18)

04. Expedited Hearings. When the Division of Behavioral Health determines that an expedited fair hearing is needed using the same standards described in Section 302 of these rules, the Department will provide an expedited fair hearing for non-Medicaid eligible YES individuals in compliance with time limits for an agency found in 42 CFR 431 for YES inpatient services, or the time limits for a PAHP found in 42 CFR 438, for outpatient YES services. (3-28-18)

752. -- 999. (RESERVED)

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