

TITLE 31
COUNTIES AND COUNTY LAW
CHAPTER 35
HOSPITALS FOR INDIGENT SICK

PRE-LITIGATION PANEL

31-3550. Declaration of public policy. It is the declaration of the legislature to be in the public interest to encourage nonlitigation resolution of claims between the counties and health providers of the state of Idaho by providing for prelitigation screening of such claims contesting indigent resource eligibility by a hearing panel as provided in this chapter.

Translation: The legislature “declares” it is in the best interest of the public for the providers and counties to find “nonlitigation resolution” of claims. In that end, this provision of the statute was written.

31-3551. Advisory panel for prelitigation consideration of indigent resource eligibility claims -- Procedure. The counties in the state of Idaho and the health providers furnishing care to eligible medically indigent persons, as defined in section [31-3502](#), Idaho Code, are directed to cooperate in providing an advisory panel in the nature of a special civil grand jury and procedure for prelitigation consideration of claims arising out of contested resource availability of persons applying for indigent relief under the provisions of [chapter 35, title 31](#), Idaho Code, which proceedings shall be informal and nonbinding, but nevertheless compulsory as a condition precedent to litigation. Proceedings conducted or maintained under the authority of this chapter shall be subject to disclosure according to [chapter 3, title 9](#), Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal. The panel, thus created, will render opinions where the resource eligibility of applicants, as herein described, has been contested.

Translation: The providers and counties are “directed” to cooperate in providing an advisory panel. The proceedings are to focus on indigency issues (contested resources), are informal and non-binding, but **compulsory as a condition precedent to litigation**. The cases are exempt

from disclosure and are shredded upon decision of the panel. The decisions are informal and non-binding and are mailed to both parties (county and provider).

31-3552. Appointment and composition of advisory panel. The panel will consist of three (3) members to be designated as follows: the chairman of the panel shall be an appointed designee by and of the director of the department of health and welfare of the state of Idaho, and must be without bias or conflict of interest; one (1) member will be appointed by and represent the Idaho association of counties; and one (1) member will be appointed by and represent the Idaho hospital association. All panelists shall serve under oath that they are without bias or conflict of interest as respects any matter under consideration.

Translation: There are 3 members of the panel. The chairman is from Health & Welfare. This individual “runs” the meeting and also designates another staff member to take minutes. The Idaho Association of Counties has one representative and the Idaho Hospital Association also has a representative. Each representative cannot have an interest in any of the cases for that session. For example, when the representative is from Canyon County, there cannot be any Canyon County cases up for review. Often, these representatives change frequently.

31-3553. Advisory decisions of panel. The general responsibility of the advisory panel will be to consider the eligibility of applicants on claims referred to them and render written opinions regarding such eligibility of applicants as based upon review of analysis of the resources available to the applicant, as defined in section [31-3502](#), Idaho Code. Following proceedings on each claim, the advisory panel shall provide the affected parties with its comments and observations with respect to the claim. They shall indicate in such comments whether the applicant appears to have resources available to him or her sufficient to pay for necessary medical services; does not have adequate resources; or any comments or observations which may be relevant and appropriate. The findings of the advisory panel may be used by affected parties in resolving contested claims in a manner consistent with the findings presented. However, such findings will be advisory in nature only and not binding on any of the affected parties.

Translation: Prior to the date of the Panel meeting, each of the 3 participants receives a copy of the cases in question. They are responsible for reviewing each case and being familiar with the

issues. Then during the Pre-Litigation Panel meeting, the three participants discuss each case and come to an agreement on how they believe the case should be resolved (i.e. the County was correct in its determination and why; the County erred in its decision and why; remand back to the County as the panel was unable to determine which party should prevail). The decisions are memorialized in minutes and letters including the respective decisions are sent to the parties involved in the case. The findings/decisions can be used in negotiations to resolve the case, but are advisory only and cannot be used in any litigation.

31-3554. Tolling of limitation periods during pendency of proceedings. There shall be no judicial or other review or appeal of such matters. No party shall be obligated to comply with or otherwise be affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not deemed to run during the time that such a claim is pending before the panel and for thirty (30) days thereafter.

Translation: If there are statutes of limitation which are relevant to the case, they are tolled until the Panel has reached its decision and then for 30 days subsequent. (The time frames are frozen during this time).

31-3555. Stay of court proceedings in interest of hearing before panel. During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any such pending claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.

Translation: Because of the requirement to utilize the Pre-Litigation Panel in cases involving indigency, providers also often file a lawsuit with the District Court (Judicial Review) to preserve their timeframes while the request for Pre-Litigation review is in progress. The timeframes are tolled in the District Court case until the Panel has made its decision and then also for 30 days after the decision is rendered.

31-3556. Expenses for advisory panel members. Expenses incurred by the members of the advisory panel in the performance of their duties will be borne by the respective organizations making the appointment.

Translation: Everyone pays for their own expenses for the Panel. Typically these are only travel expenses. However, teleconferencing is now available and the Department will simply call the Panel members for the meeting (thus eliminating the expenses to the other 2 members).

31-3557. Frequency of and agenda for meetings. Frequency of and agenda for meetings of the advisory panel will be subject to the discretion of the chair, based upon criteria to be established by the members of the panel. However, there shall be no more than four (4) meetings of the panel per year.

Translation: The Panel meetings are held no more than 4 times per year. The number of cases varies from time to time depending upon how many have been submitted to the Department for consideration. There have been as few as 5 cases and as many as 15 cases.

History:

[(31-3551) 31-A3502, as added by 1982, ch. 189, sec. 1, p. 509; am. 1990, ch. 213, sec. 28, p. 480; am. and redesisg. 2005, ch. 25, sec. 41, p. 99.]

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Other questions

Who files the Cases for Pre-Litigation? (How are they chosen?)

Either the county or the provider has the ability or option to file. But **if** the County determination is that the individual is not Indigent and the Panel is looking at the case to ensure that the decision was correct; it stands to reason that only the providers will be appealing to the Department. Each provider has different criteria to determine if they will appeal the case further.

Who pays the cost of preparing the record to forward to the Department?

The County Clerk prepares the record, but the provider pre-pays the copying costs/transcript costs. The Clerk's office will estimate the costs and provide it to the opposing attorney. Once the transcript is prepared and the case file is copied, it is forwarded to the Department of Health & Welfare. The Department then prepares the cases for presentation before the Panel.

What happens to the cases once the Panel has heard them?

Once the decisions are finalized by the Panel, the cases are shredded—either by the Department or the individual participant.

What does the Panel review in the case?

All of the information provided. The county should be providing a copy of the Record and a copy of the transcripts. The Panel members review all the information. So, be careful as to what is said on the record as it will be included in the transcripts of the hearing. Prepare this record as if you would your filing for Judicial Review. Likely you will be preparing both copies (Pre-litigation and District Court) at the same time.

What is the timeframe for the Panel to make their decision?

The Panel will likely make their decisions that day. The Department issues letters to the parties subsequent. The speed with which their staff sends the letters varies. The most recent panel met January 8, 2013 and the decisions letters were mailed February 15, 2013.

If the Panel agrees with the County, what is the provider's recourse?

The provider can proceed with their Judicial Review filing, but often they will dismiss those proceedings.