

TITLE 39
HEALTH AND SAFETY

CHAPTER 49
IDAHO HEALTH PLANNING ACT

39-4901. PURPOSE AND POLICY. It is the intent of the legislature to provide to all of Idaho residents a quality health care system for a reasonable cost and to prevent the deterioration of such system by the duplication of services or the introduction of new categories of services that are not necessary to their health. It is further the intent of the legislature to promote cooperation among health care providers in health planning activities and to provide access to necessary care for all who require it. It is hereby declared that it is in the public interest of the state, to provide for the relief from penalties of state and federal law, cooperative planning in health care that is likely to benefit the residents of the state.

[39-4901, added 1994, ch. 283, sec. 2, p. 884.]

39-4902. DEFINITIONS. As used in this chapter:

(1) "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.

(2) "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.

(3) "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 this state; or, in the case of a freestanding outpatient facility, one for which a facility fee is charged for health care services performed within.

[39-4902, added 1994, ch. 283, sec. 2, p. 884.]

39-4903. COOPERATIVE AGREEMENTS -- CERTIFICATION. (1) A health care provider may negotiate and enter into cooperative agreements with other health care providers in the state if the likely benefits resulting from the agreements outweigh the disadvantages attributable to a reduction in competition that may result from such agreements.

(2) Parties to a cooperative agreement may apply to the Idaho attorney general for a certificate of public advantage governing that cooperative 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.

(3) The attorney general shall review the application in accordance with the standards set forth in subsection (4) of this section and may hold a public hearing in accordance with rules adopted by the attorney general under chapter 52, title 67, Idaho Code. The attorney general shall grant or deny the application within sixty (60) days of the date of filing of the application and that decision must be in writing and set forth the basis for

the decision. The attorney general shall furnish a copy of the decision to the applicants and any intervenor.

(4) The attorney general shall issue a certificate of public advantage for a cooperative agreement if he determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(5) In evaluating the potential benefits of a cooperative agreement, the attorney general shall consider whether one (1) or more of the following benefits may result from such agreement:

(a) The quality of health care provided to the consumers in the state will be enhanced;

(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;

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

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

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

(6) The attorney general's evaluation of any disadvantages attributable to any reduction in competition likely to result from the cooperative agreement may include, but need not be limited to, the following:

(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;

(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;

(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.

(7) Participants in an approved cooperative agreement issued under the provisions of this section are immune from civil enforcement action and criminal prosecution for actions that might otherwise violate antitrust laws of the state of Idaho taken in furtherance of the cooperative agreement. Nothing in this section shall limit the authority of the attorney general to initiate civil enforcement or criminal prosecution if he determines that the health care providers have exceeded the scope of the cooperative agreement approved under this act.

(8) The attorney general may request periodic written updates of the progress of the approved cooperative agreement. If updates are requested, the attorney general shall specify the intervals at which they must be submitted, which shall not be less than every ninety (90) days.

(9) Nothing in this act shall obligate health care providers to submit a request for approval of a cooperative agreement as set forth under the provisions of this section. Any person who implements any cooperative action or agreement without securing the approval of the attorney general under the

provisions of this section is subject to any civil or criminal enforcement action for violations that may result from this action.

(10) It is the intent of this section to require the state of Idaho, through the office of the attorney general, to provide direction, supervision and control over approved cooperative agreements entered into under the provisions of this section. To achieve the goals specified in this section, this state direction, supervision and control of cooperative agreements will provide state action immunity under federal antitrust laws to health care providers who participate in discussions or negotiations authorized in this section, and to persons authorized by such persons to implement cooperative agreements.

(11) The attorney general may adopt rules for the implementation of this act, including rules establishing procedures and criteria for the review and evaluation of proposed cooperative agreements under this act. Rules adopted shall ensure that there is opportunity for public comment during the review and evaluation of proposed cooperative agreements.

(12) If the attorney general determines that the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweighs any disadvantages attributable to any actual or potential reduction in competition resulting from the cooperative agreement, he may revoke the certificate of public advantage governing the agreement and, if revoked, shall so notify the holders of the certificate. A holder of a certificate of public advantage whose certificate is revoked by the attorney general may contest the revocation by sending a written request for a hearing to the attorney general within ten (10) days after receipt of the notice of revocation.

(13) If a party to a cooperative agreement that is issued a certificate of public advantage terminates its participation in the agreement, the party shall file a notice of termination with 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.

(14) The attorney general shall maintain files on all cooperative agreements for which certificates of public advantage are issued and that are in effect.

[39-4903, added 1994, ch. 283, sec. 2, p. 884.]

39-4904. JUDICIAL REVIEW. Any applicant or intervenor aggrieved by a decision of the attorney general in granting or denying an application for a certificate of public advantage, refusing to act on such application or termination of a certificate of public advantage, is entitled to judicial review of the decision in accordance with chapter 52, title 67, Idaho Code.

[39-4904, added 1994, ch. 283, sec. 2, p. 886.]