

211 CMR 121.00: PROCEDURES CONCERNING ~~RATE FILINGS OF MEDICARE SUPPLEMENT INSURANCE POLICIES AND EVIDENCES OF COVERAGE ISSUED MADE PURSUANT TO A COST CONTRACT, RATES THEREOF~~ M.G.L. c. 176K, AND THE CONDUCT OF HEARINGS ~~RELATING THERETO~~ ON SUCH FILINGS

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121.01: Authority

211 CMR 121.00 is promulgated under the authority granted to the Commissioner of Insurance under M.G.L. c. 176K and M.G.L. c. 30A.

121.02: Definitions

As used in 211 CMR 121.00, the following words shall mean:

Amended Filing: A Rate Filing that the Presiding Officer, in his or her discretion, has permitted to be amended.

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Certificate: Any Certificate issued, renewed, delivered or issued for delivery in Massachusetts under a group Medicare Supplement Policy.

Commissioner: The Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Cost Containment Activities: Utilization review programs and other techniques acceptable to the Commissioner which have had or are expected to have a demonstrated impact on the prevention of reimbursement by an Issuer or a Health Maintenance Organization for services which are not medically necessary.

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Division: The Division of Insurance established pursuant to M.G.L. c. 26, § 1.

Evidence of Coverage: Any Certificate, contract or agreement issued to a Member stating health services and benefits to which the Member is entitled as described in M.G.L. c. 176G, § 7 and M.G.L. c. 176K.

Evidence of Coverage Issued Pursuant to a Cost Contract: An Evidence of Coverage issued by a Health Maintenance Organization pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 *et seq.*) whereby Medicare makes payments to the Health Maintenance Organization on a reasonable cost basis, including health care prepayment plans, and M.G.L. c. 176G, § 7 and M.G.L. c. 176K.

Filer: An Issuer or a Health Maintenance Organization which that files a Rate Filing in accordance with the provisions of M.G.L. c. 176K 211 CMR 69.12.

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Health Maintenance Organization or HMO: An entity organized under M.G.L. c. 176G which offers, sells, issues, delivers, or otherwise makes effective, or renews in Massachusetts Evidences of Coverage Issued Pursuant to a Risk or Cost Contract.

Hearing: The part of a Proceeding in which sworn testimony, oral and written, and Papers and other documentary evidence are submitted for consideration by the Commissioner. The Hearing shall conclude, for purposes of M.G.L. c. 176K, § 7(g), when the Presiding Officer issues an Order Closing the Record.

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Information Request: A written request to a Party for production of documents or tangible things or answers to interrogatories.

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Insured: A subscriber, policyholder, member, enrollee or certificateholder under a Medicare Supplement Insurance Policy.

Intervenor: Any person, agency or organization likely to be substantially and specifically affected by a Rate Filing Request who has been that is granted Intervenor status pursuant to conditions established by the Presiding Officer permission to appear and present testimony at a hearing, including, unless otherwise specified, the State Rating Bureau, and all Statutory Intervenor.

~~Issue: To offer, sell, issue, deliver, or otherwise make effective, or renew.~~

~~Issuer: Any company, as defined in M.G.L. c. 175, § 1, and that is authorized to write accident and health insurance; any hospital service corporation as defined in M.G.L. c. 176A, § 1; any medical service corporation as defined in M.G.L. c. 176B, § 1; or any Fraternal Benefit Society, as authorized in under M.G.L. c. 176; or a Health Maintenance Organization licensed under M.G.L. c. 176G; which that in the Commonwealth offers, sells, delivers or otherwise makes effective, or renews in Massachusetts the commonwealth Medicare Supplement Insurance Policies. Issuer shall does not include Health Maintenance Organizations. For purposes of determining whether an Issuer is offering a non-network Medicare Supplement plan, an Issuer shall include the Issuer, its parent company or companies, its affiliated companies, and/or its subsidiary companies.~~

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~~Medicare: "Health Insurance for the Aged Act," Title XVIII of the Social Security Act Amendments of 1965, as then constituted or later amended from time to time.~~

~~Medicare Supplement Insurance or Policy: A type of health insurance issued by a carrier, other than a policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.), or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. Unless specified otherwise, references in 211 CMR 121.00 to Medicare Supplement Insurance or Policy are intended to refer collectively to Medicare Supplement Insurance or Policy and Medicare Select Insurance or Policy.~~

~~Medicare Select Insurance or Policy: a Medicare Supplement Insurance or Policy that contains Restricted Network Provisions. Unless specified otherwise, references in 211 CMR 121.00 to Medicare Supplement Insurance or Policy are intended to refer collectively to Medicare Supplement Insurance or Policy and Medicare Select Insurance or Policy.~~

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~~Member: Any person who has entered into a health maintenance contract, or on whose behalf such an arrangement has been made, with a Health Maintenance Organization for health services and any dependent of such person who is covered by the same contract.~~

~~OBRA 90: The federal Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) and as this act is amended from time to time.~~

~~Oral Statement: An unsworn statement of position made during a hearing, with the permission of the presiding officer.~~

~~Papers: All written documents filed in a proceeding, including Rate Filings, Responsive Filings, motions, pleadings, briefs, memoranda and other communications.~~

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~~Participant: A person, agency, or organization that is granted permission to participate in a Proceeding on a limited basis as determined by the Presiding Officer.~~

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~~Party: A Filer, the State Rating Bureau, a Statutory Intervenor, or an Intervenor.~~

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~~Policy: Any Policy, Certificate, contract, agreement, statement of coverage, rider or endorsement issued by an Issuer as defined herein which provides Medicare Supplement Insurance as defined herein other than a Policy issued pursuant to a contract under Section 1876 or Section 1833 of~~

~~the federal Social Security Act (42 U.S.C. Section 1395, *et seq.*) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which provides Medicare Supplement Insurance as defined herein.~~

Policy: Any Policy, Certificate, contract, agreement, statement of coverage, rider or endorsement issued by an Issuer as defined herein which provides Medicare Supplement Insurance as defined herein other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 *et seq.*) or an issued policy under a demonstration project specified in 42 U.S.C. §. 1395ss(g)(1), which provides Medicare Supplement Insurance as defined herein. The term "Policy," unless stated otherwise within 211 CMR 71.00, includes any Alternate Innovative Benefits Riders. The term "Policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under § 1833(a)(1)(A) of the Social Security Act.

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~~Presiding Officer: The Commissioner or any person or persons designated by the Commissioner, who to conducts health and accident insurance policy rate hearings and pProceedings incident thereto pursuant to 211 CMR 121.00 and renders findings, rulings, and decisions thereon.~~

Proceeding: The process by which the Commissioner reviews and addresses a Rate Filing.

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Public Comment Hearing: The part of a Proceeding in which persons are given an opportunity to make oral statements about a Rate Filing. Written statements may be submitted at a Public Comment Hearing or at any time prior to the closing of the record of the Hearing.

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Rate Filing or Filing: Documents filed with the Commissioner by a Filer pursuant to M.G.L. c. 176K Papers or documents by which a Rate Request is made, presented in the format set forth in 211 CMR 121.00.

~~Rate Request: A proposal by an Issuer for an adjustment to the Medicare supplement insurance rates charged to Insureds or by a Health Maintenance Organization for an adjustment to rates charged to Members under an Evidence of Coverage Issued Pursuant to a Cost Contract.~~

Record Request: A request for production of documents or tangible things or answers to interrogatories, made to a Party during a Proceeding.

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Responsive Filing: Any recommendations, including supporting information or commentary, concerning Papers or documents by which an Intervenor introduces its evidence contesting a Rate Filing, and identifies issues pertaining to a Rate Filing which it intends to raise in the hearing, pursuant to 211 CMR 121.00 or any portion thereof, filed in accordance with 211 CMR 121.10.

Revised Rate Filing: Papers or documents by which a Rate Filing that has been revised to respond to the issues that resulted in Request is re-submitted after a disapproval on the merits of a Rate Filing, which request is responsive to the issues upon which the disapproval was based.

State Rating Bureau: The rating bureau in the Division established pursuant to M.G.L. c. 26, § 8E.

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Statutory Intervenor: Any person, agency or organization, including, but not limited to, the Attorney General, which that has a statutory right to appear as an Intervenor in a hearing conducted pursuant to 211 CMR 121.00 Proceeding.

Technical Conference: A conference convened by the Presiding Officer to enable the parties to narrow the issues in dispute, to conduct discovery, and to discuss issues pertaining to the calculation of a Rate Request in a Rate Filing. A Technical Conference may involve examination and cross-examination of sworn witnesses in order to clarify the technical aspects of a Rate Filing. Topics of such inquiry may include the data relied upon by the Filer, the projection trends selected, and applicable federal law.

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#### 121.03: Purpose and Scope

The rules established by 211 CMR 121.00 shall govern the form and content of Rate Filings, Responsive Filings, revised Rate Filings, procedures relating thereto, and the conduct of Hearings pertaining to concerning Rate Filings for Medicare Supplement Insurance and for Evidences of Coverage Pursuant to a Cost Contract made pursuant to M.G.L. c. 176K.

#### 121.04: General Provisions

(1) Office Filing. The provisions in 211 CMR 121.00 apply when a Hearing is required by statute, M.G.L. c. 176K, § 7(g), or by the Commissioner, M.G.L. c. 176K, § 7(d). The provisions in 211 CMR 121.00 apply independently of any other filings that are prescribed by the Commissioner in a different form or manner.

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##### (a) Papers:

1. Filing of Papers for a Hearing. All Papers must be filed at the Division's principal office during its usual business hours. The present location of the principal office of the Division is 470 Atlantic Avenue, Boston, Massachusetts 02210-2223. Should the principal office change, the new address may be obtained by telephoning the Division's general information number. The usual business hours of the office of the Division are from 8:45 A.M. to 5:00 P.M. every day, except Saturdays, Sundays and legal holidays. Papers must be sent to the attention of the Docket Clerk, Legal Division. Except for a Rate Filing or Amended Rate Filing, the requirements for which are addressed in 211 CMR 121.06 and 121.07, and a Responsive Filing, the requirements for which are addressed in 211 CMR 121.10, an original and one copy of Papers must be filed, unless more copies are specified in 211 CMR 121.00 or by the Presiding Officer. At least one copy must be submitted in an unbound format. The Presiding Officer may permit electronic filing in his or her discretion.

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2. Pagination of a Rate Filing that is the Subject of a Hearing. The pages of a Rate Filing must be numbered sequentially from the first through the last page, using Arabic numerals at the bottom right of each page. Any internal numbers applied to separate parts or sections of a Rate Filing must be located elsewhere on the page. The Presiding Officer may reject a Rate Filing that does not comply with the mandatory numbering requirement.

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3. Service of Papers on Parties. A Party or Participant shall serve, concurrently with filing with the Division, a copy of Papers on all Parties by hand delivery, or by electronic transmission promptly followed by delivery by first-class mail, postage pre-paid, unless otherwise permitted by the Presiding Officer or agreed to by the parties.

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(2) Timely Filings. The original of all pleadings, motions, documents, or papers relating to a Rate Filing before the Division, including all discovery requests and responses, shall be filed with the Division's Docket Clerk, Hearings and Appeals at the principal office of the Division within the time limits for such filing. For filings of papers other than Rate Filings or Responsive Filings, an original and one copy shall be directed to the Docket Clerk, unless otherwise provided by the Presiding Officer. The Presiding Officer may make any orders as are necessary to ensure the proper filing of papers with the Division and where unspecified by 211 CMR 121.00, the Presiding Officer shall determine how many copies of pleadings, documents, or papers shall be filed. Simultaneously, with the filings of any and all papers with the Division, the party filing such papers shall send a copy thereof to all other parties to the proceeding by delivery in hand, or by facsimile promptly followed by first class postage pre paid mail delivery, unless otherwise permitted by the Presiding Officer. Failure to comply with 211 CMR 121.04 shall be grounds for refusal by the Division to accept papers for filing. Papers must be filed within the time limits specified in M.G.L. c. 176K. The date of filing shall be determined as follows:

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- (a) Papers delivered by hand during regular business hours will be deemed filed on that day.
- (b) Papers delivered by hand at other times will be deemed filed on the next regular business day.
- (c) Papers mailed to the Division's principal office will be deemed filed on the day the Division receives them.

(3) Computation of Time. Computation of any time period of time referred to specified in 211 CMR 121.00 ~~shall begin~~ with the first day after the date of the initiating act. The last day of the period so computed is ~~to be included~~ unless it is a day ~~when on which the office of~~ the Division's principal office is closed, in which ~~event case~~ the period ~~shall run~~ until the end of the next business day. When ~~such a time period of time is five days or fewer, with the intervening~~ Saturdays, Sundays and legal holidays ~~are counted, is five days or fewer, the said Saturdays, Sundays and legal holidays shall be~~ excluded from the computation; ~~otherwise such days shall be included in the computation.~~

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(4) Requests for Extensions of Time/Modifications of Time Periods. Except for time periods prescribed by statute, ~~The Presiding Officer shall have~~as the discretion to modify ~~extend any time limit prescribed or allowed by 211 CMR 121.00, for good cause shown,~~ provided that such time limits shall be presumed to be reasonable and the party requesting such extension of time shall have the burden of establishing that such extension is necessary to afford it an opportunity for a full and fair hearing. A request for an extension must be made before the expiration of the period originally prescribed or previously extended. Except as otherwise permitted by the Presiding Officer, all requests for extension of time shall be made by written motion, filed no less than two days before the expiration of the time prescribed by 211 CMR 121.00, or previously extended. The Presiding Officer shall promptly notify all parties of the action taken upon such a motion.

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(5) ~~Signatures. Every application, filing, notice, pleading, petition, complaint, motion, brief and memorandum shall be signed by the filing party or by one or more attorneys, its counsel or authorized representatives shall sign all Papers in their individual names on behalf of the filing party. This signature constitutes a certification by the signer. Signature certifies that the signer or she has read the document and, knows the content thereof, and that the statements contained therein are believed to be true, that the document is not interposed for delay and that if the document has been signed by an authorized representative that the or she signer has full power and authority to do so sign the document.~~

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(6) ~~Notice of Appointment of Counsel or eOther Representative and Appearances. Other than the State Rating Bureau, each Pparty to any proceeding shall enter an appearance by. Any party which will be represented at a hearing by counsel or other representative shall file and serving an notice that appearance which shall contain the name, address, e-mail address, fax number, and telephone number of the Party's such counsel or other authorized representative on all persons who have previously appeared. All Papers served on a Party must appearance shall identify all authorized representatives on behalf of a party. Any notice required to be given to a party pursuant to 211 CMR 121.00 shall be given to the counsel or other representative named in such that Pparty's notice. Nothing herein shall be construed to prevent a party from appearing on its own behalf.~~

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121.05: ~~Pre-Filing Notice for Rate Filings under M.G.L. c. 176K, § 7(g) Provisions Applicable to Rate Filings for Medicare Supplement Insurance and Evidences of Coverage Issued Pursuant to a Cost Contract for Which the Commissioner's Prior Approval is Required~~  
 The provisions of 211 CMR 121.05 through 121.10 apply solely to the conduct of hearings on Rate Filings for Medicare Supplement Insurance and Evidences of Coverage Issued Pursuant to a Cost Contract for which the Commissioner's prior approval is required in accordance with 211 CMR 69.12(11)(a)7. or (11)(b)6. and (17). In addition, the provisions applicable to all hearings pursuant to 211 CMR 121.00, govern the conduct of these hearings.

#### ~~121.06: Pre Filing Notice~~

(1) ~~Timing of Notice. A Filer must notify the Division in writing of its intent to submit a Rate Filing under M.G.L. c. 176K, § 7(g). Not less than 30 days prior to submitting before submitting the Rate Filing, for which prior approval by the Commissioner is required in accordance with 211 CMR 69.12(11)(a)7. Or (11)(b)6. and (17), a Filer shall notify the Commissioner and A Filer shall provide a copy of the pre-filing notice to the State Rating Bureau, all Statutory Intervenors, and all other Intervenors all persons who intervened in any rate hearings applicable to the insurance products to be considered within the 12 months preceding the anticipated filing date in writing of its intent to submit a Rate Filing in accordance with 211 CMR 69.12(11) permitted to appear in the Filer's last Proceeding for that insurance product. The notice must identify all products for which the Filer will submit a proposed Rate Filing and the date on which the Filer expects to submit the Rate Filing to the Division. The notice also must inform all Intervenors permitted to appear in the Filer's last Proceeding, other than the State Rating Bureau and Statutory Intervenors, that they should advise the Filer if they do not want to receive a copy of the Rate Filing. If a Filer fails to provide a pre-filing notice, the Rate Filing shall be deemed to be filed 30 days after it is submitted to the Division.~~

(2) Purpose. The purpose of the notice shall be to provide the Commissioner and potential intervenors with information useful to them in preparing more effectively and efficiently for a hearing. Such information may include that which:

- (a) educates potential intervenors about the rate approval process, health insurance, and the Filer;
- (b) updates potential intervenors as to developments pertaining to the insurance products and benefit designs for which a Rate Request is anticipated;
- (c) introduces new Cost Containment Activities or techniques that are then under consideration by the Filer; and
- (d) informs potential intervenors of any historical data that are then available to the Filer that relate to the benefits that will be included in the Rate Filing.

(3) Failure to provide notice of an anticipated Rate Filing. If a Filer fails to provide notice of an anticipated Rate Filing in accordance with 211 CMR 121.06, the Rate Filing will be deemed to be filed 30 days after the filing date.

#### 121.076: Rate Filings under M.G.L. c. 176K, § 7(g)

(1) Purpose. ~~The purpose of the~~ Rate Filings under M.G.L. c. 176K, § 7(g), must ~~is to~~ furnish sufficient evidence to ~~enable~~ substantiate the Filer's ~~the Commissioner to establish that the rate requested falls within the range of reasonableness~~ compliance with the requirements of M.G.L. c. 176K, including, but not limited to, compliance with the anticipated minimum loss ratio standards of M.G.L. c. 176K, § 7(e). The Rate Filing ~~shall~~ constitute the Filer's direct case ~~of the Filer in~~ supporting of its Rate Request.

(2) Contents. The Rate Filing must consist of sequentially numbered pages and shall contain:

- (a) a title ~~which indicates~~ stating the nature of the ~~Proceedings~~, and the complete name and address of the ~~Filer~~ party submitting the ~~Filing~~;
- (b) the name, ~~and~~ address and other contact information of counsel or other ~~designated~~ authorized representative, as ~~prescribed~~ in 211 CMR 121.04(6);
- (c) an executive summary ~~containing a description, in narrative form, of~~ each element of the Rate Filing and ~~other information as prescribed from time to time by the Commissioner or the Presiding Officer~~ the reasons for the proposed Rate Filing;
- (d) sworn written testimony ~~of all witnesses including all information and commentary necessary to substantiate~~ in support of each element of the Filer's Rate ~~Request~~ Filing;
- (e) for every witness whose testimony is part of the Rate Filing, the following information:
  - 1. name and business address,
  - 2. the specific part of the Rate Filing that is the subject matter of the witness's testimony, and
  - 3. the witness's qualifications to testify on that subject matter;
- (f) all ~~material~~ information, including data, statistics, schedules and exhibits ~~which that~~ the Filer ~~wishes intends~~ to present for consideration at the ~~h~~ Hearing and all information upon which ~~its the proposed Rate Filing~~ recommendations are based, ~~so as to enable the Commissioner to assess the reasonableness of each component of the requested rate;~~
- (f) identification of each witness who submits testimony as part of the Rate Filing, including his or her qualifications to testify on the subject matter he or she addresses;

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~~and with sufficient clarity as to enable the Commissioner and the Intervenor to ascertain which witness is testifying as to each component of the Rate Filing;~~

(g) ~~all information required to be included by 211 CMR 6971.12(140);~~

(h) ~~an actuarial opinion and a legal opinion that the Filer is in compliance with the provisions of M.G.L. c. 176K;~~

(i) ~~the proposed effective date for the rate changes in the Rate Filing, which is at least 90 days after the filing date of the Rate Filing; and~~

(j) ~~other information as prescribed from time to time by the Commissioner or the Presiding Officer.~~

(4) ~~Form of Rate Filing. The Rate Filing shall be organized to correspond to the Format prescribed from time to time by the Commissioner or the Presiding Officer.~~

(35) ~~Amendments. A Filer may move in writing to amend or make additions or corrections to its Rate Filing, for good cause shown. The Presiding Officer, in his or her discretion, may deny or allow, in whole or in part, a Filer's motion to amend or make additions or corrections to its Rate Filing. Filing of an Amended Rate Filing, when permitted, shall be made in the same manner as a Rate Filing. No additions, amendments, or corrections shall be allowed after the submission described in 211 CMR 121.07, except as permitted or requested by the Presiding Officer or in accordance with 211 CMR 121.19(3).~~

(46) ~~Copies. A Filer shall submit to the Division its Rate Filing, Amended Rate Filing, or Revised Rate Filing in the form and manner prescribed by the Commissioner, and also shall file Eight-five copies of the Rate Filing-, Amended Rate Filing, or Revised Rate Filing shall be filed with the docket clerk, unless the Presiding Officer directs otherwise. Copies of The text and data included in the Rate Filing, Amended Rate Filing, or Revised Rate Filing shall be submitted on a 3.5" floppy disk readable in IBM format, ASCII only also must be filed electronically in a format determined, unless otherwise permitted in advance by the Commissioner or the Presiding Officer. On the day Concurrently, the Filer shall serve two copies of its the Rate Filing is submitted to the Division, one copy shall also be provided to on the State Rating Bureau, and one copy on each Statutory Intervenor; and each any Intervenor permitted to appear that has participated in the Filer's last rate pProceeding for that insurance product, unless such person has advised the Filer has been advised by any such party that it does not wish to receive that a copy is not wanted. The Filer shall serve aAn additional copy of its Rate Filing on a shall be provided to each person permitted to intervene in the hearing within two business days after the Filer receives notice from the Presiding Officer issuance of an order allowing the person that permission to intervene has been granted. By agreement of those concerned, copies may be served electronically.~~

(7) ~~Supporting information. The Presiding Officer may require a Filer to furnish any data or information which is determined to be necessary or appropriate in connection with the submission of any Rate Filing.~~

(8) ~~Copy Available For Inspection. A copy of each Rate Filing shall be available for inspection during normal business hours at the office of the Division from the time of its submission for at least 180 days.~~

(9) ~~Notification of Subscribers. Notice of any requested premium increase shall be communicated to subscribers no fewer than 90 days prior to the proposed effective date of the request.~~

(10) ~~Rejection of Rate Filing. The Presiding Officer may within three days after its filing, reject any Rate Filing if he or she determines that the Rate Filing does not comply with~~

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requirements as to form and content prescribed by 211 CMR 121.00. A Filer whose Rate Filing has been rejected pursuant to 211 CMR 121.07 may resubmit such Rate Filing with appropriate modifications within four days after its rejection or such other time period as determined by the Presiding Officer.

#### 121.07: Rate Filings under M.G.L. c. 176K, § 7(d)

In a Proceeding under M.G.L. c. 176K, § 7(d), the Rate Filing submitted to the Division independently of 211 CMR 121.00 in the form and manner prescribed by the Commissioner shall constitute the Filer's direct evidence, but the Filer shall submit to the Docket Clerk five additional copies of the Rate Filing, unless the Presiding Officer directs otherwise. The Presiding Officer may permit or order the Filer to supplement its Rate Filing with additional material in advance of the commencement of the Proceeding. The Filer shall submit to the Docket Clerk five copies of any supplemental information, unless the Presiding Officer directs otherwise.

The Filer shall serve two copies of its Rate Filing and any supplemental information on the State Rating Bureau, and one copy on each Statutory Intervenor and any Intervenor permitted to appear in the Filer's last rate Proceeding for that insurance product, unless such person has advised the Filer that a copy is not wanted. The Filer shall serve a copy of its Rate Filing and any supplemental information on a person permitted to intervene within two business days after issuance of an order allowing the person to intervene. By agreement of those concerned, copies may be served electronically.

#### 121.08: Hearing Notice

(1) The hearing on the rate filing shall commence after notice of such hearing has been published in accordance with 211 CMR 121.08. The Filer shall arrange to publish a Hearing notice provide all advertisements in, and notifications to, newspapers of the rate hearing required by 211 CMR 69.12(1)(e) and (17)(b) for publication in a format and at a time specified issued by the Commissioner or the Presiding Officer and by 211 CMR 121.08(1). For Proceedings pursuant to M.G.L. c. 176K, § 7(g), the Filer shall arrange to publish the Hearing notice at least

(a) No less than 21 days prior to before the scheduled date of a hHearing, the Filer shall give written notice of the hearing by publication in newspapers of general circulation in Boston, Brockton, Fall River, Pittsfield, Springfield, Worcester, New Bedford, and Lowell. For Proceedings pursuant to M.G.L. c. 176K, § 7(d), the Filer shall arrange to publish the Hearing notice at least 21 days before the scheduled date of a Hearing in newspapers of general circulation in Boston, Springfield, and Worcester. For all Proceedings, cConcurrently with such notice publication, the Filer shall give notice of the hHearing to the State Rating Bureau, to the Attorney General and to all Statutory Intervenor. The Filer shall file proof of publication with the Division within 14 days after publication. Each notice shall contain, in a format approved by the Commissioner or the Presiding Officer:

1. a statement of the date, time and location of the hearing;
2. a statement of the subjects and issues involved in the hearing;
3. a statement of procedures for appearing at the hearing; and
4. any other information required by the Commissioner or the Presiding Officer.

(b) The Presiding Officer shall provide the Filer with the hearing date, all information to be included in the hearing notice, and the format of such notice.

(2) The Filer shall file the hearing notice with the Division in accordance with 211 CMR 121.04(2) no later than 30 days before the hearing. The Filer shall file copies of all newspaper

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~~hear sheets no later than 21 days thereafter. The Presiding Officer may require additional evidence of compliance with 211 CMR 121.08(1).~~

#### 121.09: Intervention and Participation

(1) State Rating Bureau. The State Rating Bureau need not file and serve a notice of appearance on the Filer or Statutory Intervenor.

(2) Statutory Intervenor. No later than four days after publication of the Hearing notice under 211 CMR 121.08, a Statutory Intervenor intending to take part in the Proceeding shall file and serve a notice of appearance on the Filer, the State Rating Bureau, and any other Statutory Intervenor.

(3) Intervenor and Participants. No later than ten days after publication of the Hearing notice under 211 CMR 121.08, a person who wishes to appear and take part in the Proceeding other than the State Rating Bureau, Statutory Intervenor, or the Filer, shall file, and serve upon the Filer, the State Rating Bureau and all Statutory Intervenor a petition for leave to intervene or to participate. The petition must state the petitioner's name and address; the name, address and other contact information of counsel or other designated authorized representative, as prescribed in 211 CMR 121.04(6); the statutory or other authority for the petition; how the Rate Request substantially and specifically affects the petitioner; the petitioner's contentions; the relief petitioner seeks; and a description of the scope of the petitioner's proposed intervention or participation. The petition shall describe the nature of the evidence, if any, the petitioner seeks to present; state the reasons why the petitioner's interests would not be represented adequately by the Filer, the State Rating Bureau, Statutory Intervenor or Intervenor already taking part and explain how the petitioner will avoid introduction of repetitive testimony and not unduly delay the Hearing.

(4) Responses to Petitions. A Party opposing a petition to intervene or participate shall file a written objection, setting forth the grounds for its opposition, no later than two days after service of the petition.

(5) Action on Petition. The Presiding Officer may schedule a conference to address the petition to intervene or participate. The Presiding Officer shall determine whether the petitioner will be allowed to participate as an Intervenor or as a Participant, and the extent of its participation in the Proceeding. In the Presiding Officer's discretion, participation may be limited to submitting written or oral argument at the close of the Hearing. The Presiding Officer may order two or more petitioners to consolidate their appearances or presentations if consolidation will facilitate and expedite the Proceeding.

#### 121.109: Responsive Filings

(1) Purpose. The Responsive Filing shall be submitted by all Intervenor and shall identify A Responsive Filing shall state the grounds upon which the State Rating Bureau, each Statutory Intervenor supports or contests, and any other Intervenor is contesting the reasonableness of the Rate Filing. Direct testimony and the documents or other exhibits in the Responsive Filing shall constitute the direct case of each Intervenor, including the State Rating Bureau and all Statutory Intervenor.

(2) Timing. An Intervenor, other than the State Rating Bureau, The Presiding Officer shall designate a date, which shall be no more than ten days following the conclusion of the cross and redirect examination of the Filer's witnesses with regard to the Rate Filing, by which time the Statutory Intervenor and other Intervenor each shall file a Responsive Filing with the

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~~docket clerk no later than ten days after the transcript of the cross-examination of the Filer's witnesses is filed.~~ The State Rating Bureau ~~shall may~~ file a Responsive Filing ~~with the docket clerk no later than~~ two days ~~thereafter, unless the Presiding Officer, in his or her discretion, orders another time period after the other Intervenor's Responsive Filings are due.~~

(3) Contents. ~~Every Responsive Filing shall contain:~~ A Responsive Filing must consist of sequentially numbered pages, must use any format prescribed by the Presiding Officer and, subject to limits on intervention set pursuant to 211 CMR 121.09, must contain:

- (a) a title ~~stating which indicates~~ the nature of the ~~Proceedings involved therein~~, and the complete name and address of the ~~Intervenor party~~ submitting the ~~Responsive Filing~~;
- (b) the name and address of counsel, or ~~authorized other~~ representative, if the ~~Intervenor filing party is so represented, as prescribed in 211 CMR 121.04(6);~~
- (c) a statement of the issues the Intervenor ~~intends to is~~ presenting for consideration ~~at the hearing~~;
- (d) a statement ~~in short and plain terms~~ of the specific components of the Rate Filing ~~that to which~~ the Intervenor ~~is addressing objects~~;
- (e) a statement ~~in short and plain terms~~ of the legal grounds ~~on pursuant to~~ which the Intervenor ~~intends relies~~ to ~~argue support or oppose that~~ the ~~Rate Filing as a whole~~, or any part ~~thereof should be disapproved of the Rate Filing~~;
- (f) ~~at the Intervenor's option, any recommended alternative rate adjustment that the Intervenor recommends, which the Intervenor contends is supported in the record, for any element of the Rate Filing on which an Intervenor submits evidence;~~
- (g) sworn written testimony of all witnesses ~~that includes~~ all information and commentary ~~submitted necessary to substantiate in support of~~ any recommendations ~~made therein~~;

(h) for every witness whose testimony is part of the Responsive Filing, the following information:

- 1. name and business address,
- 2. the specific part of the Responsive Filing that is the subject matter of the witness's testimony, and
- 3. the witness's qualifications to testify on that subject matter;

- (i) ~~all information available material~~, including data, statistics, schedules, and exhibits, ~~necessary to substantiate any submitted in support of recommendations made therein~~;
- (j) ~~other information as prescribed from time to time by the Presiding~~

~~Officer, identification of each witness who submits testimony as part of the Responsive Filing, including his or her qualifications to testify on the subject matter he or she addresses, and with sufficient clarity as to enable the Presiding Officer and other parties to ascertain which witness is testifying as to each component of the Responsive Filing.~~

(4) Form of Responsive Filing. A Responsive Filing shall be organized so as to correspond to the format prescribed from time to time by the Commissioner or the Presiding Officer.

(45) Form of Evidence. In his or her discretion, the Presiding Officer may ~~order that evidence introduced by permit an~~ Intervenor ~~be submitted to~~ introduce evidence orally rather than in pre-filed written format.

(56) Amendments. An Intervenor may move to amend or make additions or corrections to its Responsive Filing, for good cause shown. In his or her discretion, the Presiding Officer may deny or allow, in whole or in part, an Intervenor's motion to amend or make additions or

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corrections to a Responsive Filing. ~~No additions, amendments, or corrections shall be allowed after the submission described in 211 CMR 121.09, except as permitted or requested by the Presiding Officer or in accordance with 211 CMR 121.19(3).~~

(67) Copies. ~~An Intervenor shall file five~~Eight copies of ~~the its~~ Responsive Filing ~~shall be filed with the docket clerk, unless the Presiding Officer directs otherwise. The text and data in the Responsive Filing also must be filed electronically in a format determined by~~ Copies of data included in the filings shall be submitted on a 3.5" floppy disk readable in IBM format, ASCII only, unless otherwise permitted in advance by the Commissioner or the Presiding Officer. Concurrently, an Intervenor shall serve two copies of its Responsive Filing on the State Rating Bureau, and one copy on every other Party. By agreement of those concerned, copies may be served electronically. On the day the Responsive Filing is submitted to the Division, one copy shall also be provided to the Filer and to each other Intervenor.

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(8) Supporting Information. ~~The Presiding Officer may require an Intervenor to furnish any data or information which is determined to be necessary or appropriate in connection with the submission of a Responsive Filing.~~

(9) Copy Available for Inspection. ~~A copy of each Responsive Filing shall be available for inspection during normal business hours at the office of the Division for at least 90 days subsequent to its submission.~~

(10) Consolidation of Appearances. ~~If the Presiding Officer determines that two or more parties have submitted Responsive Filings or intend to present arguments which are similar in scope, he or she may, in his or her discretion, require those parties to consolidate their appearances.~~

(11) Rejection of Responsive Filings. ~~The Presiding Officer may within three days after its filing, reject any Responsive Filing if he or she determines that the filing does not comply with requirements as to form and content prescribed by 211 CMR 121.00. An Intervenor whose filing has been rejected pursuant to 211 CMR 121.09 may resubmit such Responsive Filing within the time period specified by the Presiding Officer, which shall be no more than four days after its rejection with appropriate modifications.~~

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#### 121.110: Scheduling of Hearing Procedures

(1) Timing and Order of Presentation of the Hearing. ~~The Hearing will begin within~~No more than 30 days after following the filing of the Rate Filing with the Division~~date, the hearing shall commence. The Hearing generally shall run from day to day and shall will be conducted in the following order, and in accordance with the orders issued by the Presiding Officer at or after the pre-hearing conference: Public Comment Hearing, Technical Conference, pre-hearing conferences, examination on the Rate Filing, and examination on Responsive Filings. The Presiding Officer may alter the order of presentation on his or her own initiative, or on request by a Party.~~

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(2) Motions to Dismiss or Strike. ~~Motions to dismiss or strike must be filed in accordance with the following schedule:~~

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(a) no later than 14 days after the date the Hearing notice is published, an Intervenor may move to dismiss the Rate Filing on the ground that it contains insufficient evidence to substantiate the proposed Rate Filing, or otherwise fails to comply with the filing requirements established in 211 CMR 121.00 or 211 CMR 71.12(10);

(b) no later than three days after the filing of a Responsive Filing, the Filer may move to strike it on the ground that it contains insufficient evidence to substantiate the Intervenor's contest of the Rate Filing;

(c) the Presiding Officer may, in his or her discretion, permit a party to amend its Rate Filing or Responsive Filing in order to address the issues raised by motions to dismiss or strike;

(d) the filing of a motion to dismiss or strike will not affect the time periods provided in 211 CMR 121.00 unless otherwise ordered by the Presiding Officer.

(34) ~~Public eComment.~~ Members of the public may make oral statements from interested persons and organizations. Oral statements as described in 211 CMR 121.21(5) may be made at prior to the commencement start of the hHearing or at any-an other time as permitted by the Presiding Officer. The Presiding Officer may specify the amount of time allowed speakers. If the Presiding Officer determines that an oral statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker. Written public statements may be filed at any time before the record of the Hearing is closed. Opening statements of the parties may be made in the discretion of the Presiding Officer during this or a later stage of the hearing.

(4) Conferences. A Presiding Officer may hold a Technical Conference and other conferences.

(a) Technical Conference. The Presiding Officer may hold a Technical Conference with all Parties, or if no Party has intervened, with the Filer. A Technical Conference may involve examination and cross-examination of sworn witnesses in order to clarify the technical aspects of a Rate Filing. Topics of such inquiry may include, but will not be limited to, the data relied on by the Filer, the projection trends selected, and applicable federal law. The Filer shall arrange for the Technical Conference to be stenographically recorded. In his or her discretion, the Presiding Officer may order that all or part of a Technical Conference transcript be admitted as a part of the Hearing record.

(b) ~~Other~~ Conferences. The Presiding Officer may hold one or more conferences to address such matters as clarifying or narrowing issues, entering into stipulations, identifying admitted facts, limiting the number of witnesses, eliminating cumulative evidence, scheduling testimony, organizing exhibits, and other matters, including discovery, that may expedite the Proceeding.

(5) Rebuttal and Surrebuttal Filings. A Party, except as otherwise provided by law or 211 CMR 121.00, shall have the right to submit Rebuttal and Surrebuttal Filings. Rebuttal and surrebuttal evidence shall be limited to denial of an affirmative fact that another Party has endeavored to prove. To the extent that any Party intends to introduce rebuttal or surrebuttal evidence, it shall inform the Presiding Officer, as soon as practicable, of its intention, the subject of the proposed evidence and the identity of any witnesses. Rebuttal and Surrebuttal Filings shall be filed and served in the same manner as are Rate and Responsive Filings, respectively.

(6) Conclusion of the Hearing. The Hearing shall conclude, for purposes of M.G.L. c. 176K, § 7(g), when the Presiding Officer issues an Order Closing the Record.

(2) ~~Hearing on the Filer's Rate Filing. If any parties have intervened, cross examination, redirect and recross examination of the Filer's witnesses shall take place in the order designated in the prehearing conference. No more than ten hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties. If no party~~

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has intervened, the Presiding Officer shall conduct an examination of any of the Filer's witnesses.

(3) Hearing on the Intervenor's Responsive Filings or Examination of Intervenor's Witnesses. If any party has intervened, and Responsive Filings have been filed, the Presiding Officer shall designate a date, which shall be no later than six days following the filing of the Intervenor's Responsive Filings, by which time cross-examination, redirect and recross-examination of any of the Intervenor's witnesses in the order designated in the pre-hearing conference shall take place. If the Presiding Officer has ordered that an Intervenor may present oral direct evidence, such evidence shall be heard before cross-examination of the Intervenor's witnesses. No more than seven hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties.

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#### 121.11: Provisions Applicable to Hearings on Medicare Supplement Insurance Rate Filings Initiated by the Commissioner

The provisions of 211 CMR 121.11 through 121.14 apply solely to the conduct of hearings on Medicare Supplement Insurance Rate Filings initiated by the Commissioner in accordance with 211 CMR 69.12(11)(a)6. and 69.12(16). In addition the provisions applicable to all hearings pursuant to 211 CMR 121.00 govern the conduct of these hearings.

#### 121.12: Hearing Notice

(1) No less than 14 days prior to the scheduled date of a hearing, the Commissioner shall give written notice of the hearing by publication in newspapers in Boston, Springfield and Worcester. Concurrently with such notice, the Commissioner shall give notice of the hearing to the Issuer which submitted the Rate Filing, to the State Rating Bureau, to the Attorney General and to any Statutory Intervenor. Each notice shall contain:

- (a) a statement of the date, time and location of the hearing;
- (b) a statement of the subjects and issues involved in the hearing; and
- (c) a statement of procedures for appearing at the hearing.

(2) At the time of issuance of the Notice of Hearing, the Presiding Officer may order the Issuer to submit additional documentation in support of its Rate Filing before the commencement of the public hearing.

#### 121.13: Hearing Record

(1) The Issuer's record at the hearing shall consist of the Rate Filing which it has submitted to the Division. The Presiding Officer, in his or her discretion, may permit or order the Issuer to supplement its Rate Filing for the purposes of the hearing.

(2) In contesting the rate requested by the Issuer, an Intervenor may, but need not, present its own evidence to contest the record presented by the Issuer. The Presiding Officer, in his or her discretion, may determine whether an Intervenor's evidence shall be presented in the form of prefiled testimony or as oral direct testimony following the testimony of the Issuer's witnesses. The Presiding Officer may order Intervenor's to file Responsive Filings as defined in 211 CMR 121.09.

#### 121.14: Scheduling of Hearing

Timing and Order of Presentation of the Hearing. No more than 30 days following the filing date, the hearing shall commence. The hearing shall run from day to day and shall be

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conducted in the following order, and in accordance with the orders issued by the Presiding Officer at or after the pre-hearing conference:

(1) ~~Public comment. Oral statements from interested persons and organizations. Oral statements as described in 211 CMR 121.21(5) may be made at the commencement of the hearing or at any other time as permitted by the Presiding Officer. Opening statements of the parties may be made in the discretion of the Presiding Officer during this or a later stage of the hearing.~~

(2) ~~Hearing on the Issuer's Rate Filing. If any parties have intervened, cross-examination, redirect and recross-examination of the Issuer's shall take place in the order designated in the prehearing conference. The Presiding Officer may order the Filer to present direct testimony in advance of any cross-examination. No more than ten hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties. If no party has intervened, the Presiding Officer shall conduct an examination of any of the Issuer's witnesses.~~

(3) ~~Hearing on the Intervenor's Testimony. If any party has intervened, and any Responsive Filings have been filed, the Presiding Officer shall designate a date, which shall be no later than six days following the filing of the Intervenor's Responsive Filings, by which time crossexamination, redirect and recross-examination of any of the Intervenor's witnesses in the order designated in the pre-hearing conference shall take place. If the Presiding Officer has ordered that an Intervenor may present oral direct evidence, such evidence shall be heard before crossexamination of the Intervenor's witnesses. No more than seven hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties.~~

#### ~~121.15: General Provisions Applicable to All Hearings~~

~~The provisions of 211 CMR 121.01 through 121.04 and 121.15 through 121.27 apply to all hearings conducted pursuant to 211 CMR 121.00, *et seq.*~~

#### ~~121.16: Intervention~~

~~At any time after the filing date, but no more than four days following notice of a hearing in accordance with 211 CMR 121.08 or 121.12, each Statutory Intervenor intending to participate in the proceeding shall file with the Division and serve on the Filer, the State Rating Bureau, and all Statutory Intervenor's a notice of intent to participate. Any person that wishes to appear and present testimony at the hearing, other than the State Rating Bureau, Statutory Intervenor's, or the Filer, shall simultaneously file with the Division and serve upon the Filer, the State Rating Bureau and all Statutory Intervenor's and previously permitted Intervenor's a petition for leave to participate as an Intervenor together with its grounds therefor and a description of the extent of its proposed participation. Such petition shall include a statement explaining why the petitioner's interests will not be adequately represented by the persons previously made parties to the hearing and how the petitioner will avoid introduction of repetitive testimony and not add undue delay to the hearing. Any party opposing a petition to intervene must file a written objection to such petition, setting forth the grounds for its objection, no later than two days after service of the petition. The Presiding Officer may schedule a hearing concerning the petition, and shall rule on the petition no later than two days after service of an objection to a petition.~~

#### ~~121.127: Discovery~~

- (1) ~~Information Requests for Discovery.~~

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(a) Subject to any limits on intervention imposed pursuant to 211 CMR 121.09, a Party to a rate hearing governed by 211 CMR 121.00 may serve upon request any other Party that has submitted a Rate Filing or Responsive Filing, within ten days of the filing of that Party's Filing, written Information Requests to produce or make available any documents or tangible things, not privileged, and not previously supplied, and which that are in the custody or control of the Party upon whom the request is made served. The discovery request may be served upon the party after submission of the Rate Filing or a Responsive Filing and shall set forth the items to be provided with reasonable particularity. Discovery may be requested at any time before the conclusion of the hearing; provided, however, that discovery pertaining to a Rate Filing or a Responsive Filing may be served after the commencement of the examination of witnesses supporting that Rate Filing or Responsive Filing only upon motion; and provided further that such discovery shall not be grounds to delay the hearing except for good cause shown and in the discretion of the Presiding Officer. An Information Request must set forth, with reasonable particularity, the items to be provided. The Presiding Officer, in his or her discretion, may permit Information Requests to be served on a Party after the start of the examination of that Party's witnesses and before the conclusion of the Hearing. All discovery must shall be conducted expeditiously and, except for good cause, will not be grounds to delay the Hearing.

(b) All Information Requests must be filed and served on all Parties. A Party requesting documents from the Division or the State Rating Bureau shall pay the Division the fee per page for copies as determined from time to time by the Executive Office for Administration and Finance, unless the Presiding Officer, in his or her discretion, waives the fee.

In the case of Rate Filings subject to the Commissioner's prior approval, the request may be served upon the party after submission of the Rate Filing or Responsive Filing. In the case of hearings initiated by the Commissioner, the request may be served upon any party after the Presiding Officer has allowed a party's motion to intervene in the proceeding.

All discovery requests by any party upon any other party regarding the Rate Filing, any Responsive Filing, any evidence, or any written argument or statement of issues submitted shall be filed with the Division and served in hand upon all parties. The Presiding Officer may serve discovery on any party. Should a request be served upon the Division or the State Rating Bureau, the Division or the State Rating Bureau shall be entitled to the fee per page for copies as determined from time to time by the Executive Office of Administration and Finance, unless the Presiding Officer, in his or her discretion, waives such fee.

(2) Record Requests. Subject to any limits on intervention imposed pursuant to 211 CMR 121.09, a Party may, at the discretion of the Presiding Officer, make oral Record Requests of another Party during testimony or conferences, seeking discovery in the manner permitted for Information Requests in 211 CMR 121.12(1).

(3) Uniform Definitions in Discovery Requests. As used in 211 CMR 121, the following words shall mean:

(a) Incorporation by Reference and Limitations. The full text of the definitions set forth in 211 CMR 121.12(3)(c) is deemed incorporated by reference into all Information Requests and Record Requests, but shall not preclude the definition of other terms

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specific to the particular litigation, the use of abbreviations or a narrower definition of a term defined in 211 CMR 121.12(3)(c).

(b) Effect on Scope of Discovery. 211 CMR 121.12(3) is not intended to broaden or narrow the scope of discovery permitted by 211 CMR 121.

(c) Definitions. The following definitions apply to all Information Requests and Record Requests, unless otherwise ordered by the Presiding Officer:

1. *Communication*. The term “communication” means the transmittal of information (in the form of facts, opinions, ideas, inquiries, or otherwise).
2. *Document*. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in *Mass. R. Civ. P. 34(a)*. An earlier draft is a separate document within the meaning of this term.
3. *Identify (With Respect to Persons)*. When referring to a natural person, to “identify” means to state, to the extent known, the person’s

- a. full name,
- b. present or last known address, and
- c. the present or last known place of employment.

Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

4. *Identify (With Respect to Entities)*. When referring to an entity, to “identify” means to state, to the extent known,

- a. the entity’s full name, including (when not apparent from the name) the nature of the entity (*e.g.*, corporation, limited liability corporation, partnership, or professional corporation);
- b. present or last known address of its headquarters or principal place of business; and
- c. the state in which the entity is incorporated or otherwise created.

Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

5. *Identify (With Respect to Documents)*. When referring to documents, to “identify” means to state, to the extent known:

- a. the type of document;
- b. the general subject matter;
- c. the date of the document;
- d. the author or authors, according to the document; and
- e. the persons to whom, according to the document, the document (or a copy) was to be sent.

6. *Parties*. The term “Party,” as well as a Party’s full or abbreviated name or a pronoun referring to a Party, mean the Party and, where applicable, its officers, directors, employees, partners, corporate parent, and subsidiaries. This definition is not intended to impose a discovery obligation on any person who is not a Party to the Proceeding.

7. *Person*. The term “person” means any natural person or any business, legal, or governmental entity.

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8. Concerning. The term “concerning” means referring to, describing, offering evidence of, or constituting.

9. State the Basis or State all Facts. When an Information Request or Record Request calls upon a party to “state the basis” or “state all facts” concerning a particular matter (or uses comparable language), the Party shall provide a substantial summary of the factual basis supporting the matter at the time of the response to the Request. The summary shall: identify the essential acts or failures to act forming the substance of the matter, identify the persons and entities that, through firsthand information or possession of documents, are the sources of the Party’s information regarding the matter, and, when the basis of the matter is one or more documents, identify (or provide as part of the response a copy of) each such document. In stating the basis, a Party may not withhold information from the response because it derives from attorney work product or was obtained in anticipation of litigation if the Party intends to offer this information at the Hearing.

(42) Responses to Discovery.

(a) Answers to Information or Record Requests. Answers to Information Requests or Record Requests must ~~discovery requests made by any party shall~~ be filed ~~with the Division~~ and served ~~in hand~~ upon all ~~p~~Parties no more than five days ~~following after~~ receipt of the ~~r~~Request, ~~unless the Presiding Officer establishes a shorter or longer time period.~~ A ~~p~~Party upon which a discovery Rrequest ~~for discovery~~ is served may, within ~~the time period established for response~~ ~~two days of service of the request or such other time period as is designated by the Presiding Officer,~~ file ~~with the Presiding Officer~~ objections ~~to the request or move a motion~~ for a protective order ~~with respect to specified portions of the Request,~~ provided that ~~such a party it first~~ has first attempted in good faith to resolve the grounds for its objection or motion with the ~~p~~Party seeking discovery. Objections or a motion for a protective order must be served upon all Parties. ~~A party opposing such objection or motion shall advise the Presiding Officer of any opposition within two days after the filing of the original objection or motion, provided that such a party has first attempted in good faith to resolve the grounds for its opposition with the party objecting to discovery. The Presiding Officer shall expeditiously rule on such objection or motion, and may schedule a hearing thereon. Protective orders and/or sanctions, as provided for in 211 CMR 121.17(4), may be issued to protect a party from annoyance, embarrassment, oppression or undue burden or expense, or to prevent undue delay in the hearing. Orders of the Presiding Officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential or privileged information or documents, consistent with applicable statutes. Responses to discovery requests ordered to be made by the Presiding Officer shall be made within five days of the Presiding Officer’s order or within such other time period as ordered by the Presiding Officer.~~

(b) Obligation to Attempt to Resolve Discovery Issues. If a Party’s discovery Request is not honored in whole or in part, or if it opposes an objection or a motion for protective order, it must first attempt in good faith to resolve the issue with the other Party. If the issue cannot be resolved, the Party may, within three days of service of

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the objection or motion, file a motion to compel a response. The Presiding Officer may schedule a proceeding to address the motion.

(c) Objections to Information Requests or Record Requests. General objections to Information Requests or Record Requests are prohibited. Each objection to a Request shall be specific to that Request and shall have a good faith basis. If a Party refuses to answer an Information Request or Record Request, the Party shall so state and identify each objection asserted to justify the refusal to answer. If a Party, after having asserted an objection, answers the Information Request or Record Request, the answer shall state either:

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1. notwithstanding the objection no information has been withheld from the answer, or

2. information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting Party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

(d) Objections to Requests for the Production of Documents and Things.

1. Where a Party serves a response to a Request for production of documents and things before production is completed, the response may include general objections. Where general objections are made, however, the responding Party shall prepare and serve a supplemental response no later than five days after the completion of production.

2. Once production is completed, general objections to Requests for production of documents and things are prohibited. As to each Request, the supplemental response shall state either:

a. notwithstanding prior general objections, all responsive documents or things in the possession, custody, or control of the responding Party have been produced;

b. after diligent search no responsive documents or things are in the possession, custody, or control of the responding Party; or

c. the specific objection made to the Request.

When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding Party that have not been produced because of the objection.

3. In the initial written response, the responding Party shall articulate with clarity the scope of the search conducted or to be conducted. If the scope of the search changes during production, the responding Party in a supplemental written response shall articulate with clarity the change in scope. If the scope of the search does not include all locations, including electronic storage locations, where responsive documents or things reasonably might be found, the responding Party shall explain why these locations have been excluded from the scope of the search.

(3) Additional Discovery. The Presiding Officer may in his or her discretion permit additional discovery if any party is permitted to amend or supplement a filing, as provided in 211 CMR 121.07(5), 121.09(6) and 121.19(3).

(54) Rulings on Discovery Disputes/Sanctions. The Presiding Officer may in his or her discretion compel a response to the discovery sought and may, where justice requires, issue

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protective orders to protect a Party from annoyance, embarrassment, oppression or undue burden or expense, or to prevent undue delay in the Proceeding. The Presiding Officer may order limits on the scope, method, time and place for discovery or impose provisions for protecting confidential or privileged information or documents, consistent with applicable statutes. impose sanctions on any party whose discovery responses are untimely, evasive or incomplete and on any party whose discovery requests cause annoyance, embarrassment, oppression or undue burden or expense. Such sanctions may include orders for judgment on one or more issues, limitations on the introduction of evidence on one or more issues, and/or other orders the Presiding Officer deems appropriate in the exercise of his or her discretion.

#### **121.18: Technical Conference**

No earlier than ten days and no later than 15 days following the issuance of the Notice of Hearing, if any party has intervened, the Presiding Officer may, in his or her discretion, conduct a Technical Conference with all parties. If no party has sought to intervene, the Presiding Officer may conduct a Technical Conference with the Filer or Issuer. The purpose of the conference shall be to narrow the issues to be contested in the hearing and to conduct discovery of matters pertaining to Cost Containment Activities and the technical ratemaking calculations employed by the Filer or Issuer. Such discovery may include, but shall not be limited to, the data employed, the projection trends selected, and the external data relied on by the Filer or Issuer. The Presiding Officer shall have the authority to compel production of non-privileged information requested by an Intervenor necessary to expedite preparation for the hearing. The Presiding Officer may consider any proposed stipulations at the Technical Conference. The conference shall be recorded, and shall be treated as discovery; provided, however, that in his or her discretion, the Presiding Officer may order that all or part of the Technical Conference transcript be admitted as a part of the hearing record

#### **121.19: Pre-Hearing Motions**

Pre-hearing motions must be filed in accordance with the following schedule:

(1) No later than 21 days following the date of the Notice of Hearing, any Intervenor may file a motion to dismiss the filing or for judgment on any or all issues raised by the Rate Filing on the ground that the Rate Filing contains insufficient evidence to substantiate the recommendations, or otherwise fails to comply with the filing requirements established in 211 CMR 121.00 or the filing requirements established in 211 CMR 69.12(11), including insufficient description of the rationale for the elements prescribed by the Commissioner.

(2) No later than three days following the filing of any Responsive Filing, the Filer may file a motion to dismiss the Responsive Filing or for judgment on any or all issues raised by the Responsive Filing on the ground that the Responsive Filing contains insufficient description of the rationale on which the Intervenor contests the elements of the Rate Filing prescribed by the Commissioner or insufficient description of the rationale for any alternative rate adjustment element contained in the Responsive Filing.

(3) The Presiding Officer may, in his or her discretion, permit a party to amend its Rate Filing or Responsive Filing in order to address the issues raised by pre-hearing motions, including motions to dismiss, or to add or revise data based on information obtained from the federal Health Care Financing Administration; provided that such an amendment does not represent a significant change to the filing.

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(4) All other pre-hearing motions, not specifically addressed in 211 CMR 121.00, shall be filed before the pre-hearing conference.

(5) The filing of any pre-hearing motion shall not affect any time frames provided in 211 CMR 121.00.

#### ~~121.20: Pre-Hearing Conference~~

Before the hearing the Presiding Officer shall hold a pre-hearing conference with all parties to consider:

- (1) the simplification or clarification of the issues;
- (2) the possibility of obtaining stipulations, admissions, and agreements on documents and on matters already of record which will avoid unnecessary proof;
- (3) the limitation of the number of expert witnesses or avoidance of similar cumulative evidence;
- (4) the identification of witnesses who will be cross-examined at the hearing and the determination of their order of appearance;
- (5) the possibility of agreement disposing of all or any of the issues in dispute;
- (6) the conduct and format of the hearing, in the event that no parties have intervened;
- (7) such other matters as may assist in the disposition of the proceeding.

#### 121.1324: Conduct of Hearing Proceedings

(1) Hearing Docket. The Division shall maintain a hearing docket for each Rate Filing and shall assign a number to each docket. The Division shall enter in such docket all documents relating to each proceeding to which 211 CMR 121.00 applies

(2) Presiding Officer. The hearing shall be conducted by the Presiding Officer who shall administer oaths and affirmations and conducts the Proceeding and makes all decisions regarding on the admission or exclusion of evidence and testimony or any other procedural matters which may arise in the course of the hearing. The Presiding Officer may issue orders he or she finds proper, expedient or necessary to enforce and administer the provisions of 211 CMR 121.00, M.G.L. c. 176K and M.G.L. c. 30A. The Presiding Officer may administer oaths and affirmations. The Presiding Officer shall also draw up a schedule for hearings and taking into account the goal of concluding a proceeding in an expeditious manner, and may order the consolidation of related Proceedingshearings. The Presiding Officer may impose sanctions on a Party that does not comply with an order issued in a Proceeding. Such sanctions can include entering orders or decisions on one or more issues, limiting the introduction of evidence, limiting a Party's participation in the Proceeding, and addressing other matters he or she deems appropriate. The Presiding Officer may shorten or terminate any phase of the Proceedinghearing for a pParty's failure, in the absence of reasonablewithout good cause, to comply with the prescribed schedule or to proceed with expeditionexpeditiously. The Presiding Officer may grant a motion to extend or to shorten a time period at the request of a party or on his or her own motion if he or she determines that an extended orshortened time period is appropriate.

#### (2) Ex Parte Communications.

(a) Within the time frame set forth in 211 CMR 121.13(2)(b), until the rendering of a final decision, no person who is not employed by the Division shall communicate *ex parte* with the Commissioner, the Presiding Officer, or any Division employee involved in the decision process for the Proceeding in question, with respect to the merits of the Proceeding. A request for a report concerning the status of a Proceeding

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or an inquiry as to the Division's practice or procedure shall not be considered an *ex parte* communication.

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(b) The prohibitions of 211 CMR 121.13(2) apply from the time a person knows or reasonably should know that a Proceeding will be initiated. Otherwise, for Proceedings pursuant to M.G.L. c. 176K, § 7(g), the prohibitions apply from the time the Filer submits a pre-filing notice in accordance with 211 CMR 121.05; for Proceedings under M.G.L. c. 176K, § 7(d), the prohibitions apply from the time the Commissioner issues the Hearing notice. In all cases, the prohibitions apply as long as a Proceeding is open.

(c) If the Presiding Officer determines that a Party has violated 211 CMR 121.13(2), the Presiding Officer may exclude that Party from the Hearing or decide against that Party with prejudice. If the Presiding Officer determines that a person not a Party has violated 211 CMR 121.13(2), the Presiding Officer may exclude that person from the Hearing.

(3) Cross Examination. Every party shall have the right to require that any adverse party's witnesses be made available to be cross examined, provided the party has indicated it intends to conduct such cross examination sufficiently in advance to permit the orderly conduct of the hearing.

(4) Rebuttal and Surrebuttal Filings. Any party seeking to submit additional evidence by way of rebuttal or surrebuttal testimony in denial of an affirmative fact which an adverse party has endeavored to prove may, on motion, submit such testimony at the discretion of the Presiding Officer, and in accordance with the schedule determined by the Presiding Officer. A party seeking to introduce rebuttal or surrebuttal evidence shall inform the Presiding Officer as soon as practicable of its desire to do so, and shall include in its motion the subject of the proposed evidence, the reason why further testimony at this stage of the proceeding is necessary and the identity and availability of any witnesses. The Presiding Officer may in his or her discretion, order oral or written rebuttal or surrebuttal evidence.

(5) Oral and Written Statements. The Presiding Officer may specify the amount of time allowed to any speaker for his or her Oral Statement. Although oral and written statements shall generally be heard or submitted at the commencement of a hearing, the Presiding Officer may, in his or her discretion grant permission to any person to make an Oral Statement or submit a written statement at any time during the hearing. If he or she determines that an Oral Statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker. Persons making Oral Statements shall not be sworn as witnesses. The Presiding Officer may permit the submission of written statements in lieu of or in addition to Oral Statements. Such written statements need not be sworn testimony.

(36) Motions. A Party requesting a ruling shall make a motion that states the ruling sought and the grounds for the request. The Presiding Officer may make rulings during the hearing regarding the admissibility of evidence or any other matter which may arise during a hearing. Any party making application to the Presiding Officer for a ruling shall do so by motion which shall state the ruling sought and the grounds therefor. The Presiding Officer may require that a motion be presented made in writing. A Party shall file an opposition to a written motion no later than two days after the motion is filed and served. The Presiding Officer may, in his or her discretion, allow, deny, or require hear oral argument on a motion prior to making a decision thereon.

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~~(7) Objections to Rulings. At the time that a ruling of the Presiding Officer is made or sought any party may make known its objection to the rulings and its grounds therefor; provided that if a party has no opportunity to object to a ruling at the time it is made, such party may, within three days of the ruling, state in writing its objection and its grounds therefor.~~

~~(48) Official Notice. The Presiding Officer may take official notice of any fact that can which may be judicially noticed by the Massachusetts courts of this Commonwealth and, in addition, may take official notice of general, technical or scientific facts within his or her specialized knowledge and/or experience. ; provided, that (The Presiding Officer shall notify all Parties of the material so noticed and shall permit a ; and provided further that any pParty, upon timely request, be afforded an opportunity to contest the facts so noticed. The Presiding Officer may utilize use his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to him or her.~~

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~~(59) Evidence. The Presiding Officer need not observe the rules of evidence observed by the courts of the Massachusetts or United States courtsof Massachusetts, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may-can be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Presiding Officer may exclude testimony or evidence which-that he or she determines isto-be unduly repetitious, or to have an unreasonably dilatorythat will delay effect upon the Proceeding unnecessarilyhearing process, or which he or she determines should have been submitted as part of a Rate Filing or Responsive Filing. All evidence on which the Presiding Officer's decision is based, including any records, investigation reports and documents in the Division's possession, of the Division of which the Presiding Officer desires to avail him or herself in making a decision, shall be offered and will be made a part of the record in the proceeding, and no other factual information or evidence shall-can be considered, except for facts officially noticed, as is provided in 211 CMR 121.13(4). Documentary evidence may be received in evidence in the form of copies or excerpts, at the discretion of, or by incorporation by reference, if permitted by the Presiding Officer.~~

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~~(10) Additional Evidence. At any stage of the hearing, the Presiding Officer may call for further evidence upon any issue, and require such evidence to be presented by any party. The Presiding Officer may, in his or her discretion and for good cause shown, permit a party during the hearing to introduce exhibits and raise issues not included in its Rate Filing or Responsive Filing.~~

~~(64) Control of Evidence-Testimony. The Presiding Officer shall have the right to may question witnesses at any time in the course of their testimony. At any stage of the Proceeding, the Presiding Officer may call for further evidence on an issue, and require a Party to present that evidence. The Presiding Officer may limit, strike or terminate Where he or she determines that the testimony of the witness is irrelevant, immaterial or repetitious evidence, -he or she may order the witness to limit or omit further testimony on a certain subject or to cease his or her testimony altogether, or order all or portions of the testimony to be stricken. In the event that any witness who has given written or oral testimony or has been identified as responsible for part of a Rate Filing or Responsive Filing, is unavailable for cross-examination on that testimony or part of a filing at the hearing, all such written testimony or part of a filing shall be removed from the record unless the Presiding Officer determines that no party would be unduly prejudiced by its inclusion. For the purpose of 211 CMR 121.21(11), "unavailable" shall include, without limitation, situations in which the witness (a) is absent from the hearing, or (b) unreasonably obstructs cross-examination despite an order from the Presiding Officer. The Presiding Officer,~~

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in his or her discretion, may permit a Party to introduce exhibits and raise issues not included in its Rate Filing or Responsive Filing, for good cause shown. If, despite an order from the Presiding Officer, a witness fails to be present for his or her examination or unreasonably obstructs examination, the Presiding Officer may find the witness to be unavailable. Upon finding a witness to be unavailable, the Presiding Officer may order stricken from the record all testimony by the witness and evidence submitted through the witness.

(712) Offers of Proof. Any Party may make an offer of proof made in connection with an objection to following a ruling by the Presiding Officer rejecting or excluding proffered oral evidencetestimony. The offer of proof must includeshall consist of a statement of the substance of proposed oral testimony and copies of proffered documents the evidence which the party making such offer contends would be adduced by the testimony. If the rejected or excluded evidence consists of documents or records, or of references to documents or records, a copy of such documents, records or references shall be marked for identification and shall constitute the offer of proof. The Presiding Officer may require that the offers of proof be submitted made in writing.

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(813) Stipulations. At any stage of the hearing Proceeding, the pParties may either orally or in writing stipulate to any pertinent fact or issue. At any stage of the proceeding, the parties may file a written stipulation with respect to any pertinent fact. If the Presiding Officer decides to reject any such stipulation, he or she shall so state this on the record and, as otherwise if appropriate, permitgive the pParties the opportunity to present evidence and argument on such issue or the matter.

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(14) Oral Argument. The Presiding Officer may, either on his or her own motion or on the motion of any party, allow and designate time for the presentation of oral argument. The Presiding Officer shall consider the following factors: the complexity or importance of the issues, the public interest to be served, and the availability of time.

(915) Conduct of Persons Present. All parties, counsel, witnesses and other persons present at a hearingProceeding shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the Massachusetts courts of the Commonwealth. If theseWhere such standards are not observed, the Presiding Officer may issue orderstake such action as he or she deems appropriate to maintain order, including the exclusion of any disorderly person from the hearingProceeding. If the person so excluded is a pParty or its agent representative, the Presiding Officer may decide against such the pParty with prejudice.

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(106) Transcripts. The Filer shall engage a qualified stenographer to record and transcribe the Proceeding expeditiously. All proceedings in a hearing shall be officially recorded and transcribed by a reporter subject to the approval of the Presiding Officer. The Filer or the Issuer, where applicable, shall pay the cost of the stenographer's reporter's fees, andtogether with the cost of providing the Division with the original and one copyies of the transcript in the quantity and format determined by the Presiding Officer, which may include electronic copies, and of providing one copy to and the State Rating Bureau and to each every Statutory Intervenor with one copy thereof. Other pParties and Participants may obtain copies of the transcript from the stenographer reporter at cost, unless the Presiding Officer determines that the Filer should provide a transcript to a Party or Participant.

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## 121.1422: Briefs

(1) Briefs. Parties, and any Participant who has been permitted to do so, may file briefs if so directed by the Presiding Officer within a period set by the Presiding Officer in his or her

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discretion, which shall be no more than 14 days following the completion of the hearing. Each ~~pParty~~ and permitted Participant shall ~~who files a brief shall submit~~ five copies ~~of its brief thereof to the docket clerk and serve one copy thereof on each other pParty and on each Participant who has been allowed to file a brief,~~ unless the Presiding Officer directs ~~otherwise that a different number of copies be served.~~ Briefs also shall be filed on computer disk or by other electronic means in a format determined by the Presiding Officer. The Presiding Officer may set a page limit for briefs. Each brief ~~shall must~~ include:

- (a) a concise statement of the case;
- (b) ~~a summary of the~~ arguments ~~of the Party or Participant~~ with ~~specific identification of all the evidence relied upon to support its positions, with references to where this supporting evidence appears in cited to the record; and~~
- (c) a ~~statement of conclusion stating the specific relief requested on every contested issue; and-~~
- (d) any other information required by the Presiding Officer.

(2) Reply Briefs. Parties may submit reply briefs ~~if permitted by at the discretion of the Presiding Officer in his or her discretion,~~ within a period set by the Presiding Officer ~~in his or her discretion,~~ which ~~shall will~~ be no more than four days following the filing of an opposing ~~pParty's~~ brief. Reply briefs ~~shall be in accordance with the terms of 211 CMR 121.22, must comply with the format, filing and service requirements of 211 CMR 121.14(1).~~

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#### 121.23: Presiding Officer

~~(1) The Presiding Officer shall make all decisions regarding any procedural matter which may arise in the course of the proceeding, and may issue any such orders as he or she finds proper, expedient or necessary to enforce and administer the provisions of M.G.L. c. 176K or, where applicable, M.G.L. c. 30A. The Presiding Officer may shorten or terminate any phase of the proceeding for a party's failure, in the absence of reasonable cause, to comply with the schedule or to proceed with expedition. At any time during the proceeding, the Presiding Officer may grant a motion to extend or to shorten a time period at the request of a party or on his or her own motion if he or she determines that an extended or shortened time period is appropriate.~~

~~(2) Ex Parte Communications. From the filing date until the rendering of a final decision no person who is not employed by the Division shall communicate ex parte with the Presiding Officer with respect to the merits of this proceeding; provided that a request for a report concerning the status of a proceeding or an inquiry as to the Division's practice or procedure shall not be prohibited by 211 CMR 121.23(2), but the party making such inquiry must first inform all other parties of its intent to do so. If the Presiding Officer determines that a party or its attorney or authorized representative has violated this provision he or she may exclude such party from the hearing or the proceeding or decide against it with prejudice. If the Presiding Officer determines that a person not a party has violated this rule, he or she may exclude that person from the hearing or the proceeding.~~

#### 121.1524: Decisions

(1) The ~~decision of the~~ Presiding Officer's decision shall be in writing or stated ~~ion~~ on the record no more than 30 days following the conclusion of the ~~public h~~ hearing as prescribed by 211 CMR 121.11(8). The Presiding Officer shall notify all parties of the decision, of their right to appeal ~~the decision~~, and of the time within which to appeal.

(2) ~~The decision shall approve or disapprove each separate element of the requested rate increase, and shall be accompanied by a statement of reasons therefor, including determination of each issue of fact or law necessary to the decision. Filed Rates~~ that are approved ~~shall~~ may be effective not earlier than 30 days ~~after~~ subsequent to such approval. For ~~any element filed rate~~ that is disapproved, the Presiding Officer ~~shall~~ may indicate ~~the an~~ an alternative ~~value rate~~ value rate or component, ~~if any~~ if any, that he or she ~~would~~ finds to be reasonable, ~~if any, and the reasons therefor. If any element is disapproved,~~ if any, and the reasons therefor. If any element is disapproved, ~~the Filer or Issuer may then make a Revised Rate Filing that conforms with the alternative values or incorporates the rate or rate components that the Presiding Officer indicated are would be reasonable.~~

(3) The submission and approval of a revised Rate Filing ~~by the Filer or Issuer shall will~~ not affect ~~its the Filer's~~ its right to appeal ~~from those elements of the requested rate increase that were disapproved as provided in 211 CMR 121.26~~ the disapproval of any elements of its Rate Filing.

#### 121.1625: Revised Rate Filing

(1) Contents. A Revised Rate Filing shall be made w Within the time period specified in the Presiding Officer's decision, a Filer may file a Revised Rate Filing in the docket opened for the Rate Filing. and The Revised Rate Filing must contain all information and meet all other shall be limited to such response necessary to meet the requirements set forth in the decision by the Presiding Officer on the Rate Filing and shall contain all data and analyses required by the Presiding Officer's in his or her decision, and must comply with the format, filing and service requirements of 211 CMR 121.05, but otherwise need not otherwise comply with the format set forth in 211 CMR 121.050.

(2) Proceedings Hearing on Revised Rate Filings. Promptly after the submission of the revised Rate Filing, the Presiding Officer will may hold a hHearing on a Revised Rate Filing, and shall hold a Hearing on a Revised Rate Filing if a Party requests one, within five days of the filing of the Revised Rate Filing with all those who were party to the original proceeding. At that such a Hhearing, the Presiding Officer may hear argument and/or receive evidence regarding compliance with the decision on the Rate Filing, concerning whether the revised Rate Filing meets the requirements set forth in the Presiding Officer's decision. After the conclusion of the hearing, if the Presiding Officer shall approvedetermines that the a rRevised Rate Filing if it meets the requirements for approval set forth in his or herthe decision on the Rate Filing, the revised Rate Filing shall be approved. If he or she determines that it does not, the Filer or Issuer may, with leave of the Presiding Officer, be permitted to revise the filing further to meet such requirements. The Presiding Officer may permit a Filer further to revise a Revised Rate Filing to meet the requirements for approval set forth in the decision on the Rate Filing.

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#### 121.1726: Appeals

A person aggrieved by a Presiding Officer's decision that is not affirmed by the Commissioner may appeal that decision to the Commissioner in accordance with M.G.L. c. 26, § 7.

~~Any subscriber, Filer, Issuer, or other~~ person aggrieved by a the decision of the Commissioner, including a Commissioner's simultaneous affirmation of a Presiding Officer's decision, ~~may appeal that decision in accordance with M.G.L. c. 26, § 7. Any subscriber, Filer, Issuer, or other person aggrieved by the final decision of the Commissioner may,~~ within 20 days from the filing of ~~his or herthe~~ his or her decision, file a petition in the Supreme Judicial Court for ~~the~~

~~county of Suffolk County for review of such the decision. Any order, decree, or judgment of the Supreme Judicial Court modifying, amending, annulling or reversing such decision or any further decision of the Commissioner pursuant to such an order, decree, or judgment which affects the overall rate approved shall be effective as of the effective date permitted by the order from which the appeal was taken.~~

121.1827: Suspension or ~~M~~modification of the ~~R~~requirements of ~~F~~filing or ~~P~~prior ~~A~~approval of ~~contracts and R~~rates

The Commissioner may, by written order pursuant to M.G.L. c. 176K, § 7(k), suspend or modify the requirements of filing or prior approval of ~~contracts and rates to ensure compliance with and consistency between Massachusetts and federal Medicare Supplement Insurance requirements, including the requirements of OBRA 90, or to prevent inequity to subscribers or to the Filer or Issuer.~~

#### 121.19: Severability

If any section or portion of a section of 211 CMR 121.00 or the applicability thereof to any person, entity, or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of 211 CMR 121.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

#### REGULATORY AUTHORITY

211 CMR 121.00: M.G.L. chs. 176K and 30A.

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