

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Kenneth A. Hansen, Director  
Nancy L. Lancaster, Editor

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# SPECIAL NOTICES

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## AGRICULTURE AND FOOD ADMINISTRATION

### UTAH SOIL CONSERVATION COMMISSION MEETING

Public Notice is hereby given of a regular meeting of the Utah Soil Conservation Commission (USCC) to be held as follows:

The meeting will be on March 17, 2003, Monday, from 2:00 - 5:00 p.m. at the Dixie Center, 1835 Convention Drive, St. George, UT, in the Entrada-A Room. This meeting precedes the 2003 Utah Water Users Workshop which will be held March 18 - 19, 2003, at the Dixie Center in St. George.

This notice is given on behalf of Commissioner Cary G. Peterson, USCC Chair.

Calendar of future events is as follows:

1. May 21 (Wednesday) regular meeting at 1:30 - 4:30 p.m. in Roosevelt
2. May 22 (Thursday) 2003 Annual UT Conservation Field Day in Duchesne
3. July 15 (Tuesday) regular meeting at 1:00 - 4:00 p.m. in Salt Lake City
4. September 3 and 4 (Wednesday and Thursday) 2003 NPS Conference in Garden City, Rich County
5. September 7 - 10 (Sunday through Wednesday) 2003 NACD SW and Pacific Combined Regional Meeting and 4th Annual Western Conservation District Meeting in Colorado Springs, CO

*Commission contact: K. N. "Jake" Jacobson, Administrator Officer with the UDAF, PO Box 146500, Salt Lake City, UT 84114-6500; phone (801) 538-7171; FAX (801) 538-4940; or E-mail at: [JakeJacobson@utah.gov](mailto:JakeJacobson@utah.gov)*

**End of the Special Notices Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 15, 2003, 12:00 a.m., and February 28, 2003, 11:59 p.m. are included in this, the March 15, 2003, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least April 14, 2003. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through July 13, 2003, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page.**

**Commerce, Real Estate**  
**R162-106**  
**Professional Conduct**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE No.: 26060  
 FILED: 02/28/2003, 09:24

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In Section R162-106-3, the requirement that the seal that appraisers are required to affix to their reports have a set size, be rectangular in shape, and have a border has become impractical in the age of digital signatures and electronic transmission of appraisal reports. In Section R162-106-7, this change is made to harmonize the rule with recent changes made in the Uniform Standards of Professional Appraisal Practice.

SUMMARY OF THE RULE OR CHANGE: The size of the seal will no longer be specified, and it will no longer be required that it be rectangular in shape or that it have a border. In the second change, the requirement of analyzing a year's worth of listing history is changed to three years' worth of listing history.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-17(3)(e)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: A small savings in investigation costs is anticipated because the Division will no longer be required to entertain complaints that the seal used by an appraiser does not conform to specific size and shape requirements.
- ❖ LOCAL GOVERNMENTS: Local government should not be affected by the rule change because local government does not regulate appraisers.
- ❖ OTHER PERSONS: It is not anticipated that there will be either costs or savings to other persons, including the users of appraisal services. Without one mandated type of seal, users of appraisal services will still have other means to determine whether the appraiser is properly licensed, such as requiring a copy of his license or certification. There are also other means besides a seal available to the users of appraisal services to verify who has completed the appraisal, such as the signature of the appraiser or an electronic digital signature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Liberalizing the appearance of the seal will not cost appraisers anything. It may in some cases save them money because they will no longer be required to incur costs for a program that will insert a graphic constituting their seal into a computer-generated appraisal report. Concerning the change in the period of listing history to be analyzed, if the data is obtained from a multiple listing service, it will be no more costly to obtain three years of listing information as opposed to one year. If the history is obtained from listing agents or property owners, a slight increased cost may be incurred for additional telephone calls to additional agents or owners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While appraisers will be required to do more research, the increased reliability of appraisals will reduce losses to businesses relying on appraisals. No net fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
 REAL ESTATE  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY UT 84111-2316, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

**R162. Commerce, Real Estate.**  
**R162-106. Professional Conduct.**  
**R162-106-1. Uniform Standards.**

106.1. As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), all appraisers must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division. All persons licensed or certified under this chapter must also observe the Advisory Opinions of USPAP. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005. Registered expert witnesses, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.

**R162-106-2. Use of Terms.**

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser," and "State-Licensed Appraiser" shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number or license number must follow his name.

**R162-106-3. Signatures, Size and Use of Seal.**

106.3.1. State-Certified Appraiser's Seal.

106.3.1.1. When signing a certified appraisal report, State-Certified General Appraisers and State-Certified Residential Appraisers shall place on at least the certification page of the appraisal report, immediately below the appraiser's signature, the seal required by Section 61-2b-17(3)(e).

106.3.1.2. The seal to be affixed on reports prepared by state-certified appraisers shall contain the words "Utah State-Certified Residential Appraiser" or "Utah State-Certified General Appraiser" along with the appraiser's certificate number and expiration date. The zeros preceding the certificate number may be deleted. ~~[-The size of the seal, rectangular in shape, shall be no larger than two and seven eighths inches long and five eighths of an inch high including the border. An example of the seal shall be made available on request at the Division offices.]~~

106.3.1.3. The seal may be reproduced as a stamp with ink that can be copied, or may be inserted by computer in an appraisal report at the appropriate place.

106.3.2. State-Licensed Appraisers. State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.3. Signatures.

106.3.3.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.3.2. Appraisers may not affix their signatures to blank or partially completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.

106.3.3.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.

106.3.3.4. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

#### **R162-106-4. Testimony by an Appraiser.**

106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.

106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.

#### **R162-106-5. Failure to Respond to Investigation.**

106.5. When the Division notifies an appraiser or registered expert witness of a complaint, the notified individual must respond to the complaint in writing within ten business days of the notice from the Division. Failure to respond within the required time period to a notice of complaint, a subpoena, or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.

#### **R162-106-6. Recordkeeping Requirements.**

106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.

#### **R162-106-7. Sales and Listing History.**

In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze the listing history of the subject property for the year preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.

**KEY: real estate appraisals, conduct**

~~[November 15, 2001]~~ **2003**

**Notice of Continuation March 27, 2002**

**61-2b-27**



## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-504**

## Nursing Facility Payments

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 26051

FILED: 02/18/2003, 14:01

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment extends coverage of the stop loss payment to certain nursing homes for an additional six months.

**SUMMARY OF THE RULE OR CHANGE:** Section R414-504-4 is amended to extend its coverage through the first two quarters of calendar year 2004.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 26-1-5 and 26-18-3

#### **ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** Total expenditures by the Department will not be impacted by this change, because the overall amount of money is simply being reallocated among the nursing homes; thus, no overall impact on the state budget.

❖ **LOCAL GOVERNMENTS:** The stop-loss will benefit at least one facility operated by a local government and will cushion impact on this agency. The overall reimbursement to nursing homes will not change. This extension will give nursing homes additional time to react to reduced reimbursement.



❖ **OTHER PERSONS:** The stop-loss will benefit facilities that would otherwise experience even larger reductions from their current rate. Facilities that are experiencing gains in their rate due to the case mix system will have a proportionate reduction in their rate to fund the \$5 stop loss for one year. This extension will give nursing homes additional time to react to reduced reimbursement.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs for regulated facilities are predicted, beyond the savings or cost detailed in the cost information above.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This extension will give nursing homes additional time to react to reduced reimbursement.  
Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at [rmartin@utah.gov](mailto:rmartin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

#### **R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

##### **R414-504. Nursing Facility Payments.**

###### **R414-504-1. Introduction.**

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-2, and 26-18-3.

###### **R414-504-2. Definitions.**

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the

Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing facility" means any Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(7) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(8) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance).

(9) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(10) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

##### **R414-504-3. Principles of Facility Case Mix Rates and Other Payments.**

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patients.

(1) Effective January 1, 2003 approximately 50% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 38% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) The Department calculates each nursing facility's case mix index quarterly based upon the previous 12 month moving average case mix history.

(3) For any fiscal year, the total amount paid to nursing facilities will be matched to available appropriations. The Department may adjust rates as needed to reflect changes in appropriations or to match payments to available appropriations.

(4) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing will determine the amount of any add-on based on available appropriations.

(5) Property costs are paid separately from the RUGS rate. Each facility's property payment is as follows:

(a) Each facility's reimbursement rate effective July 1, 2002 includes a property payment between \$11.19 per patient day or up to a maximum of \$20.00 per patient day. No facility may receive a higher payment attributable to property as a result of this rule. The property payment shall be reduced if the occupancy of the facility is below 75%, by assuming occupancy of 75% and adjusting 2001 FCP allowable property costs accordingly. This adjusted patient day figure is then divided into actual property costs to determine allowable property costs.

(b) The property payment shall be set on January 1, 2003, based on the calculation in (a), above. Property payments shall be phased out by reducing the payment by 25% of the January 1, 2003 amount for each of the succeeding two calendar years, with property payment stopping effective January 1, 2006. The amount reduced from property payments shall be shifted to other components of the rate and distributed to facilities consistent with R414-504-3(3).

(6) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(5). A newly constructed facilities' property payment may not exceed \$20.00 per patient day and shall be reduced if R414-504-3(5)(b) is applicable.

(7) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. The new owners property payment may not exceed \$20.00 per patient day and shall be reduced if R414-504-3(5)(b) is applicable.

(8) If the Department determines that a facility is located in an under-served area, or addresses an under-served need, the Department may negotiate a payment rate that is different from the case mix index established rate. This exception may be awarded only after consideration of historical payment levels and need.

(9) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

(10) The Department may increase reimbursement to urban nursing homes using a wage index adjustment to recognize local labor market costs relative to the state as a whole. The Department shall use a wage index that reflects nursing home costs. This

adjustment may cause a decrease in reimbursement to rural nursing homes.

#### **R414-504-4. Transition Reimbursement Principles.**

For each quarter ~~for~~ of calendar year 2003 and for the first two quarters of calendar year 2004:

(1) The Department shall determine if any facility's total rate is scheduled to be reduced by more than \$5.00 per patient day, as compared to the total rate for that facility in effect on December 31, 2002. The total rate amount for the facility determined to be in effect as of December 31, 2002 shall be adjusted by any disallowances or other adjustments;

(2) For all facilities with a drop of more than \$5.00 per patient day in their total rate as of the applicable quarterly adjustment, the Department shall adjust up the total rate of all such facilities to a rate where the loss is equal to \$5.00 per patient day; and

(3) The total rate for all facilities with a gain in rate or a drop of less than \$5.00 per patient day shall be proportionately adjusted down to fund the adjustment in R414-504-4(2).

#### **KEY: Medicaid**

~~2002~~ 2003

26-1-5

26-18-2

26-18-3

## Human Services, Aging and Adult Services **R510-100** Funding Formulas

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26052

FILED: 02/19/2003, 15:54

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** A formula is required by Federal law to distribute Older Americans Act funds to Area Agencies on Aging (AAA). This formula establishes a fixed sum to be distributed to each AAA.

**SUMMARY OF THE RULE OR CHANGE:** This change defines the distribution of Title III funds using a base factor formula.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-3-108, and Pub. L. No. 89-73

#### **ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** No cost is anticipated. The change is being made at the request of a committee. There is no anticipated bottom-line change.

❖ **LOCAL GOVERNMENTS:** No cost is anticipated. The change is being made at the request of a committee. There is no anticipated bottom-line change.

❖ OTHER PERSONS: No cost is anticipated. The change is being made at the request of a committee. There is no anticipated bottom-line change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is anticipated. The change is being made at the request of a committee. There is no anticipated bottom-line change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule establishes a base formula for distributing Title III funds to local Area Agencies on Aging.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
AGING AND ADULT SERVICES  
Room 325  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Lee Ann Whitaker, Sally Anne Brown, or Vanessa Thompson at the above address, by phone at 801-538-3915, 801-538-8250, or 801-538-9877, by FAX at 801-538-4395, 801-538-4395, or 801-538-4016, or by Internet E-mail at lwhitaker@utah.gov, sabrown@utah.gov, or vthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Helen Goddard, Director

## **R510. Human Services, Aging and Adult Services.**

### **R510-100. Funding Formulas.**

#### **R510-100-1. Older Americans Act.**

(1) Compliance with State and Federal Law for Older Americans Act (OAA).

(a) The Division of Aging and Adult Services (Division) shall develop an intrastate funding formula for distribution of OAA, Title III: Grants for State and Community Programs on Aging funds and State general funds for social and nutrition services which complies with 45 CFR, Subchapter C, Part 1321.37 and with Section 62A-3-108.

(b) The formula shall be reviewed whenever a new State Plan on Aging is required to be submitted.

(2) Affected Funding Sources for OAA.

(a) The funding formula shall include:

(i) All federal funds received under Title III of the OAA with the exception of:

(A) Allowable State Division administrative funds, and

(B) Funds allocated to the State-delivered Long-Term Care Ombudsman Program.

(ii) All state funds appropriated for Title III social and nutrition services.

(b) The funding formula shall not include state or federal funds appropriated for:

(i) The Alternatives Program,

(ii) Adult Services under the Division, or

(iii) Funds identified under Section 62A-3-108(2).

(3) Funding Formula Factors for OAA.

(a) The funding formula shall incorporate the following factors:

(i) Base factor divided equally among the twelve Area Agencies on Aging (AAA) in existence on July 1, 1986;

(ii) Population factor comprised of each AAA's proportion of the State's weighted elderly population; and

(iii) Land area factor consisting of each AAA's proportion of the State's total adjusted square miles.

(b) Weighted elderly population shall consist of:

(i) The number of persons age 60 and over who have annual incomes below 125% of the poverty level, plus

(ii) The number of persons age 75 and over weighted two times, plus

(iii) The number of minority persons, [~~Hispanic, Native American, Asian/Pacific Islander, and Blacks;~~ as defined by the Governor's Office of Planning and Budget, age 60 and over.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the [~~Utah State~~] Governor's Office of Planning and Budget.

(4) Base Restrictions for OAA.

(a) If any AAA in existence on July 1, 1986, should in the future sub-divide into two or more AAAs, the base amount allocated to the original AAA shall be divided proportionally among the new [~~AAA~~] AAAs.

(5) Base Factor Funds.

(a) Base factor funds shall consist of those federal Title III and state funds appropriated for Title III social and nutrition services and allocated as base funds in FY 2003.

(6) Funding Distribution for OAA.

(a) Distribution of funds under the formula shall be as follows:

(i) [~~7.5% of total formula funds allocated to the base factor~~] Base factor funds;

(ii) 7.5% of total remaining formula funds allocated to the land area factor; and

(iii) [~~85%~~] 92.5% of total remaining formula funds allocated to the population factor.

#### **R510-100-2. In-Home Services.**

(1) Affected Funding Sources for In-Home Services.

(a) The funding formula shall include all federal and state funds appropriated for use by local area agencies on aging to be used for in-home services with the exception of:

(i) funds allocated under Section R510-100-1 and

(ii) funds identified under Section 62A-3-108(2), and

(iii) Adult Services funded under the Division pursuant to Section 62A-3-301 et seq.

(2) Funding Formula Factors for In-Home Services.

(a) The funding formula shall include the following factors:

(i) Land area factor consisting of each AAA's proportion of the state's total adjusted square miles.

(ii) Population factor comprised of each AAA's proportion of the designated population factors.

(iii) Base amount of \$16,000 allocated to each Area Agency on Aging.

- (b) Designated population factors shall consist of the following:
- (i) The number of minority persons, as defined by the Governor's Office of Planning and Budget [~~Hispanic, Native American, Asian/Pacific Islanders and Blacks~~], age 60 and over weighted 10%,
- (ii) The number of all persons age 18-59 weighted 5%,
- (iii) The number of all persons [~~age~~]60 years of age and over weighted 55%, and
- (iv) The number of all persons [~~age~~]75 years of age and over weighted 30%.
- (c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the [~~Utah State~~]Governor's Office of Planning and Budget.
- (3) Funding Distribution for In-Home Services.
- (a) Distribution of funds under the formula will be as follows:
- (i) 10% of total formula funds allocated to the land area factor; and
- (ii) 90% of total formula funds allocated to the population factor.
- (4) Funding Formula Phase-In for In-Home Services.
- (a) Funds allocated in fiscal year 1993 shall be held harmless.
- (b) New funds above the fiscal year 1993 level shall be allocated by the in-home services funding formula.

#### **R510-100-3. Long-Term Care Ombudsman Program.**

(1) Affected funding sources for the Long-Term Care Ombudsman (LTCO) Program.

(a) All Federal and State funds received for delivery of the LTCO Program with the exception of State Division administrative funds.

(i) Funding Formula for the LTCO Program.

The funding formula for the LTCO Program shall allocate dollars to each designated AAA based on the following factors:

(A) Federal Funds.

Using the base allocation of federal funds available for the LTCO program during State Fiscal Year 1993, each designated AAA will receive an equal share of the dollars available.

Additional funds that may become available above the base allocation will be distributed based on each AAA proportion of long-term care beds in the State as reported by the State Department of Health and the Division for the preceding year. Long-term care beds shall include licensed nursing facility beds, licensed residential care beds, and approved adult foster care beds.

(B) State General Funds.

A base allocation of \$60,000 shall be distributed equally to each designated AAA.

State General funds in excess of this base allocation shall be distributed based on each AAA's proportion of long-term care beds in the State, as reported by the State Department of Health and the Division for the preceding year.

**KEY: elderly, funding formula[<sup>≠</sup>], long-term care ombudsman[<sup>≠</sup>]**  
**[January 15, 1997]2003**

**Notice of Continuation November 1, 2002**  
**62A-3-108**

▼ ————— ▼

## Human Services, Recovery Services

# R527-39

### Applicant/Recipient Cooperation

## NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26061

FILED: 02/28/2003, 16:25

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are currently six Medicaid programs that do not require the applicant/recipient to cooperate with the Office of Recovery Services/Child Support Services (ORS/CSS) in providing case information, establishing paternity and/or a child support and medical support order, obtaining support payments, and enforcing the provisions of support orders. It is, therefore, necessary to add a clarification to the rule that there are some Medicaid program exceptions to the requirement to cooperate with ORS/CSS. The informal review that the agency conducts is now referred to as an "administrative review" and the review conducted by a Presiding Officer under the Utah Administrative Procedures Act (UAPA) is referred to as an "adjudicative proceeding" as specified in Section 62A-11-307.2. It is necessary to revise the terms in Section R527-39-2 accordingly. In addition, one of the steps for appealing an informal (administrative) review needs to be eliminated. When an applicant/recipient disagrees with the results of an informal (administrative) review, the next step in the appeal process is to request an adjudicative proceeding under UAPA. The agency decision may no longer be appealed to the team manager. If the applicant/recipient disagrees with the results of an adjudicative proceeding, s/he may request reconsideration under UAPA rather than petitioning the district court directly. This option needs to be added to the rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R527-39-1(5) has been revised to clarify that applicants/recipients of some Medicaid programs are not required to cooperate with ORS/CSS in the areas listed. In Subsection R527-39-2(1), the term "informal review" has been replaced with "administrative review" and clarification has been added so that the reader understands the administrative review is not conducted under the Utah Administrative Procedures Act (UAPA), and how a senior ORS/CSS agent makes an independent review of the initial noncooperation determination to arrive at determination of cooperation, noncooperation, or cooperation in good faith. The term "adjudicative proceeding" has been added because it means a review conducted under UAPA. The phrase "take the matter to court" has been replaced with a more precise description of what is necessary to do that. In Subsection R527-39-2(2), "informal" has been replaced with "administrative", "senior" has been added to clarify the level of agent that conducts an administrative review, "administrative review" has been replaced with "adjudicative proceeding", and more description has been added to better explain what "take the matter to court" means. In addition, the step of appealing an informal (non-UAPA) review to the team manager has been removed from Subsection R527-39-2(2). In Subsection R527-39-2(3), "results of an administrative review (the term that has been used to denote an adjudicative proceeding under UAPA)" has been replaced with "Decision and Order" which is the result of an adjudicative proceeding, and the option to request reconsideration of the Decision and Order (rather than directly

petitioning the district court) has been added. A clarification was also added to Subsection R527-39-2(3) that if the district court is petitioned following an adjudicative proceeding, it will review the Decision and Order.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-11-104(11) and Section 62A-11-307.2

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--All of the proposed rule changes reflect current terminology and practices and will, therefore, have no additional impact on the state budget.

❖ LOCAL GOVERNMENTS: None--Administrative rules of the Office of Recovery Services do not apply to local governments.

❖ OTHER PERSONS: None--All of the proposed rule changes reflect current terminology and practices and will, therefore, not create additional financial impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--All of the proposed rule changes reflect current terminology and practices and will, therefore, not create additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes provide necessary updates and clarifications concerning applicant/recipient cooperation and review of noncooperation decisions. This rule does not address businesses and it is not expected that any of the proposed changes will have a direct fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY UT 84102-4211, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wayne Braithwaite at the above address, by phone at 801-536-8986, by FAX at 801-536-8509, or by Internet E-mail at waynebraithwaite@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Emma Chacon, Director

## **R527. Human Services, Recovery Services.**

### **R527-39. Applicant/Recipient Cooperation.**

#### **R527-39-1. Definitions.**

1. IV-A recipient means any individual who has been determined eligible for financial assistance under title IV-A of the Social Security Act.

2. Non-IV-A Medicaid recipient means any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Social Security Act but has not been determined eligible for, or is not receiving, financial assistance under title IV-A of the Social Security Act.

3. IV-A agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title IV-A of the Social Security Act.

4. Medicaid agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title XIX of the Social Security Act.

5. An applicant/recipient of IV-A or Non-IV-A Medicaid services, with some Medicaid program exceptions, must cooperate with the Office of Recovery Services/Child Support Services (ORS/CSS) in:

- identifying and locating the parent of a child for whom aid is claimed;
- establishing the paternity of a child born out of wedlock for whom aid is claimed;
- establishing an order for child support;
- obtaining support payments for the recipient and for a child for whom aid is claimed unless a Good Cause determination has been made by the IV-A or Medicaid agency, or the Non-IV-A Medicaid applicant/recipient has declined child support services;
- obtaining any other payments or property due the recipient or the child; and
- obtaining and enforcing the provisions of an order for medical support.

6. The applicant/recipient must cooperate with ORS/CSS with specific actions that are necessary for the achievement of the objectives listed above, as follows:

- appearing at the ORS/CSS office to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;
- participating at judicial or other hearings or proceedings;
- providing information;
- turning over to ORS/CSS any support payments received from the obligor after the Assignment of Collection of Support Payments has been made.
- complying with a judicial or administrative order for genetic testing.

#### **R527-39-2. Request for Review.**

1. When ORS/CSS notifies a IV-A or Non-IV-A Medicaid applicant/recipient that she/he is not cooperating in a case, the applicant/recipient may contest the determination by requesting that ORS/CSS conduct an ~~informal review, or an~~ office administrative review. ~~[under].~~ Such a review shall not be subject to the provisions of the Utah Administrative Procedures Act (UAPA), or be considered an adjudicative proceeding under Section 63-46b-5 and Rule R527-200, ~~[or the].~~ The applicant/recipient may [take the matter to] choose instead to request an adjudicative proceeding under UAPA, or petition the district court to review the noncooperation determination and issue a judicial order based on its findings. If an administrative review is requested, the senior agent designated to conduct the review shall examine the case record, talk to the agent assigned to the case, consult with the team manager, and consider any new information the applicant/recipient provides to determine whether she/he has or has not met the cooperation requirements listed in Section 62A-11-307.2 or is not able to meet the requirements and is cooperating in good faith.

2. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the results of an ~~informal~~ administrative review conducted by an

ORS/CSS senior agent, she/he may ~~[appeal the decision to the team manager. If the applicant/recipient disagrees with the decision of the manager, the applicant/recipient may]~~ request that an ORS/CSS Presiding Officer conduct an ~~[administrative review]~~ adjudicative proceeding ~~[under the Utah Administrative Procedures Act]~~, or the applicant/recipient may ~~[take the matter to]~~ petition the district court to review the initial noncooperation determination and the results of the administrative review, and issue a judicial order based on its findings.

3. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the ~~[results of an administrative review]~~ Decision and Order ~~[conducted]~~ issued by an ORS/CSS Presiding Officer ~~[under the Utah Administrative Procedures Act]~~ after the close of an adjudicative proceeding, she/he may request reconsideration within 20 days after the date the Decision and Order is issued as provided in Sections 63-46b-13 and R527-200-14, or petition the district court ~~[for judicial]~~ to review the Decision and Order and issue a judicial order based on its findings.

**KEY: child support**  
~~[April 5, 1999]~~ **2003**  
 62A-11-104(11)  
 62A-11-307.2



## Human Services, Services for People with Disabilities

# R539-1

### Eligibility

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 26063  
 FILED: 02/28/2003, 16:58

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment clarifies and updates policy and procedures related to eligibility determination for general developmental disability services and the Home and Community-Based Waiver.

**SUMMARY OF THE RULE OR CHANGE:** This filing applies to Sections R539-1-1 and R539-1-2. Changes in Section R539-1-1 clarify eligibility requirements and the applicant's role for developmental disability services. Changes in Section R539-1-2 clarify the requirements for the Home and Community-Based Waiver.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 62A-5-101 and 62A-5-102

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The changes to this rule result in cost neutrality. With the changes, there are no additional requirements, just clarification of the existing process and requirements.

❖ **LOCAL GOVERNMENTS:** No local government funding is used in any of these activities, therefore, it is expected that there is no cost to local governments.

❖ **OTHER PERSONS:** There are no additional costs for other persons. There are no additional requirements, just clarification of the existing process and requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no additional compliance costs for persons. There are no additional requirements, just clarification of the existing process and a clarification of the applicant's role in the process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to this rule have no fiscal impact on the providers because this is a determination of eligibility not a determination of funding.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
 SERVICES FOR PEOPLE WITH DISABILITIES  
 Room 411  
 120 N 200 W  
 SALT LAKE CITY UT 84103-1500, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at [mmannebach@utah.gov](mailto:mmannebach@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/28/2003 at 10:00 AM, 120 N 200 W, Room 411, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

**R539. Human Services, Services for People with Disabilities.**

**R539-1. Eligibility.**

**R539-1-1. Eligibility for General Developmental Disability Services.**

A. Policy.

~~— The Division of Services for People with Disabilities will serve those persons who meet the definition of disabled in Section 62A-5-101.~~

~~— 1. Operational definition—Life Activity Limitations:~~

~~— a. Self care—A person who requires assistance, training or supervision in toileting, dressing, grooming, bathing or eating.~~

~~— b. Receptive and expressive language—A person who is limited in expressive and/or receptive language. Expressive impairments are noted when a person lacks functional skills and/or requires the use of assistive devices to communicate. Receptive impairments are noted when a person does not demonstrate understanding of requests or is unable to follow two step instructions.~~

— e. Learning/Cognitive Development— A person who has obtained a valid and reliable IQ Score of two standard deviations or more below the mean on an individually administered standardized intelligence test.

— d. Mobility— A Persons with a mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self evacuate from a building within a reasonable period of time.

— e. Self direction— A child (age 6-18 who is unable to make age-appropriate decisions concerning self protection. An adult who is unable to provide informed consent for such issues as medical/health care, personal safety, legal, financial, habilitative or residential issues and/or who has been declared legally incompetent.

— f. Capacity for independent living— A person who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. A person who is a significant danger to self or others without supervision.

— g. Economic self sufficiency— An adult who receives Social Security Administration benefits: who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support. A person under age 18 is:

1. The Division will serve those Applicants who meet the definition of disabled in Utah Code Annotated 62A-5-101. These are Applicants who have a severe, chronic disability:

a. attributable to mental or physical impairment or a combination of mental and physical impairments;

b. likely to continue indefinitely;

c. resulting in a chronic substantial functional limitation of the areas of major life activity as defined below; and

d. requiring a combination or sequence of specialized interdisciplinary or generic care, treatment, or other services that may continue throughout life and must be individually planned and coordinated.

For individuals age seven and above, substantial chronic functional limitations in at least three of the seven areas of major life functions listed below. (when determining limitations in the areas listed below, age appropriate abilities must be considered)

1. Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

2. Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

3. Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

4. Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency.

5. Capacity for Independent Living - An Applicant who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

6. Self-direction - A child (age 6-17) who is significantly below average in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

7. Economic self-sufficiency - (This area is not applicable to

children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

For individuals six years of age or younger substantial chronic functional limitations in at least two of the four areas listed below. (Note: if only two areas are checked, one area cannot be social. Age appropriate activities must be considered.)

1. Motor Skills (gross motor, fine motor)

2. Communication/Language (expressive, receptive)

3. Cognitive Development

4. Social

The Applicant or the Applicant's Representative must be a Resident (see Page 17 of this Policy Manual for definition of "Resident") of the state of Utah prior to the Division's final determination of eligibility.

The Applicant or Applicant's Representative shall be provided with information about Division service options and a copy of the Division's Guide to Services, Medicaid, state and local Family Councils, community resources (e.g. vocational rehabilitation, SSI, etc.). If an Applicant's Representative is interested in residential services for an Applicant who is 17 years of age and under, the Applicant's Representative shall be provided with (in addition to the documents listed above) an Office of Recovery Services (ORS) Pamphlet and given instructions on how to contact ORS in order to request a required Duty of Support application.

The intake process determines eligibility for Division funding. Medicaid information shall be provided to the Applicant.

B. Procedures.

1. Individuals seeking services from the Division shall provide, to the intake specialist, a Form 19 signed by a licensed physician, licensed psychologist or certified school psychologist. For children six years of age and younger, letters from two licensed or certified professionals working in the disability field will be accepted in lieu of the form 19 providing the letters state: the child is at serious risk of a disability, the disability is likely to continue indefinitely, and the child would benefit from Division services.

2. A person determined eligible for waiver services may choose to maximize the amount and/or frequency of supports by use of the Medicaid DD/MR Waiver. If the person chooses not to participate in the Medicaid Waiver, the person shall only receive that portion of State assistance that would be used to pay the State match for supports covered by Medicaid.

1. It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the Intake worker.

2. The following documents are required to determine eligibility for State funded developmental disabilities services.

a. A Division Form 19 (Eligibility for Services) signed by a licensed physician, licensed psychologist or certified school psychologist, or Division Form 19C for a child six years of age or younger signed by a professional, licensed or certified in the disability field;

b. Supporting documentation for all functional limitations identified on the Division Form 19 or Division Form 19C shall be gathered. Supporting documentation is filed in the Applicant's record. Examples of supporting documentation include, but are not limited to, an ICAP, psychological evaluation, medical health summary and a standardized developmental assessment (e.g. Batelle, Denver, Help Strands, Mullen, Developmental Profile, etc.).

c. Inventory for Client and Agency Planning (ICAP) assessment;

d. Social History completed by or for the Applicant within one year of the date of application; and

e. Psychological Evaluation or, for children six years of age or younger, a Developmental Assessment.

3. If eligibility documentation is not completed within 90 calendar days of initial contact, a Form 522I (Notice of Agency Action) and Form 490S (Hearing Rights Form) shall be sent to Applicant or Applicant's Representative indicating that the intake case will be closed.

4. When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall:

a. determine the Applicant eligible or ineligible for funding for developmental disabilities supports; or

b. if Region staff are unable to determine eligibility, the Region staff may forward the Applicant's name and intake information to the State Eligibility Committee for placement on the Committee's next meeting agenda. The Committee shall review the Applicant's information and determine if the Applicant is eligible for funding. If the timeline goes over 90 calendar days from the date of initial referral, the Region Supervisor may grant an extension of the 90-day time frame.

5. A Notice of Agency Action, Form 522, and a Hearing Request, Form 490S, are mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding (see Policy 1-5, Notice of Hearing for Agency Action). The Notice of Agency Action, Form 522, should inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list.

#### **R539-1-2. Eligibility for Home and Community-Based Waiver Services.**

##### **A. Policy.**

[Some people are further eligible for federally matched services (Home and Community Based Services Waiver) who meet Division eligibility and, in addition, have mental retardation or a developmental disability which would require the level of care provided in an Intermediate Care Facility for the Mentally Retarded in accordance with R414-39.

] Matching federal Medicaid funds are available through the Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities. To be determined eligible for Waiver funding Applicants must:

1. Meet all state eligibility requirements including having a disability that results in substantial chronic functional limitation(s) in three or more of major life activities 1 through 6 (economic self-sufficiency is not allowed as a functional limitation for Waiver eligibility) for individuals seven years of age or older, or two of four major life activities 1 through 4 for children six years of age or younger (if only two substantial chronic functional limitations are checked, one cannot be social); and

2. Require the Level of Care provided in an Intermediate Care Facility for People with Mental Retardation, (per Code of Federal Regulations, 42 CFR Part 441 Subpart G).

3. Applicants who are found eligible for Waiver funding must participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

This policy does not apply to Applicants who meet the separate eligibility criteria for personal assistance and brain injury outlined in Division policy 3-1 and 4-1 respectively. Applicants who have a

disability due only to mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse, personality disorder or the aging process do not qualify for services under this policy.

##### Procedure

1. Applicants found eligible for the Waiver based on their disability shall be provided with an array of service options, including a list of Intermediate Care Facilities for People with Mental Retardation (ICFs/MR). (For persons under 11 years of age, see Procedure 5C below.)

A. If the Applicant chooses to receive services in an Intermediate Care Facility for People with Mental Retardation (ICF/MR), the Region Director will write a letter of referral.

B. If funding is unavailable for an Applicant who chooses to receive services from a community Provider, the Applicant's name is entered on the waiting list in accordance with Division policy 2-2, Waiting List and Needs Assessment.

C. As per Utah Code Annotated 62A-5-402 (2)(a) and 62A-5-403, children under 11 years of age should reside in a family-like environment. Exceptions to the statute require an Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

2. Children six years of age, who are currently receiving Division funding, must initiate a division Form 19 before a child's seventh birthday to re-determine eligibility for Division funding. If the child is determined to not be eligible or the Division Form 19 is not returned within 90 calendar days from the day a Form 19 was either given or mailed to the Applicant or Applicant's Representative, a Form 522I (Notice of Agency Action) and Form 490S (Hearing Rights Form) are sent to the Applicant or Applicant's Representative.

**KEY: disabled persons, social services**

**[November 24, 1998]2003**

**Notice of Continuation December 18, 2002  
62A-5-103**



## Human Services, Services for People with Disabilities

### **R539-3-2**

#### The Individual Plan

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 26062

FILED: 02/28/2003, 16:50

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies and updates policy and procedures related to individual planning methodologies.

SUMMARY OF THE RULE OR CHANGE: The person centered planning approach allows the person and family to take a more active role in the design and tailoring of supports to meet the areas of need identified by the Person. The changes give more flexibility to the planning team to use the creativity and



strengths from within the planning team to support the person in achieving their desired goals. The changes also emphasize the importance of developing nonpaid sources of support. The changes clarify the responsibility of the team members to assess, plan, implement, and evaluate the goals and supports for which they are accountable. In addition, changes to the planning methods updates problematic outdated terminology and processes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-5-102 and 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to the planning methodology with its focus on the family and person will result in cost neutrality. On one side, there is an increased cost for Division staff time because the planning process takes a lot more time for staff and team members to complete. But the effectiveness of planning and the inclusion of nonpaid natural supports improve and counter balances this time commitment.

The cost savings is realized when the plan maximizes family and community involvement and responsibility. This means that more activities are identified where families and community members, who are unpaid, take responsibility to provide supports instead of paid providers.

❖ LOCAL GOVERNMENTS: No local government funding is used in any of these activities, therefore, it is expected that there is no cost to local governments.

❖ OTHER PERSONS: Provider agency staff may record more of their time in planning activities, yet, the funding amount provided is not adjusted or increased due to this process. These activities are considered part of the rate paid to providers. No reimbursement is made to other members of the planning team. No additional costs for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: People in services under new planning requirements are invited to take more responsibility for the planning. Since they are unpaid there is no added cost. But the additional time spent in planning could be considered a compliance cost to the person and provider agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Service providers may lose some time as parents, siblings, and other team members volunteer to provide more unpaid supports to consumers and as consumers opt to be more independent from provider agencies. No other fiscal impacts are identified beyond service providers under contract with the division.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
SERVICES FOR PEOPLE WITH DISABILITIES  
Room 411  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/28/2003 at 10:00 AM, 120 N 200 W, Room 411, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

**R539. Human Services, Services for People with Disabilities.  
R539-3. Service Coordination.**

**R539-3-3. ~~The Individual Plan~~ Person-Centered Process.**

A. Policy.

~~[An Individual Plan will be developed for each recipient of Division residential and day services to ensure that the appropriate array of services and supports is designed to address the identified needs and desires of the individual. The plan must either follow a person-centered planning approach or the traditional behavioral approach. The traditional behavioral approach must be used for individuals receiving any type of residential service, level 5 or higher, or any type of day service, level 3 or higher. Integrated plans across providers are optimal and encouraged where feasible.]~~ The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process must have an individualized focus and incorporates the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and their Team should guide and direct this process.

B. Procedures.

~~1. The initial Individual Plan will be developed within 30 calendar days of program admission during a meeting of the members of the planning team. Team members include:~~

- ~~a. the individual receiving services;~~
- ~~b. the family and/or legal representative;~~
- ~~c. the qualified region case manager and other Professionals whenever appropriate;~~
- ~~d. appropriate provider staff; and~~
- ~~e. anyone else the individual or legal representative invites.~~

~~2. It is the responsibility of the provider to schedule the meeting and provide written notification to all Individual Plan team members at least ten days in advance; however, if the individual or legal representative desires to schedule the meeting and/or send out invitations the provider shall assist them to do so as requested.~~

~~3. In the event the region case manager is not able to attend the planning meeting, the meeting will be rescheduled (the new meeting time should be on or before the due date).~~

~~4. In the event consensus is not reached by the members of the planning team, members should not sign the document and should instead follow R539-2-5, Notice and Hearings for Service Changes.~~

~~5. It is the responsibility of the provider to produce the Individual Plan document, implement services and supports they are responsible for as specified by the Individual Plan, evaluate the individual's progress, and revise the plan as needed with the planning team. The document shall:~~

~~a. be dated, including the month, day, and year of the plan. The plan shall be updated at least annually and dated within the same month as the original plan.~~

~~b. list the following demographic information:~~

~~(1) person's full name;~~

~~(2) date of birth, including month, day, and year; and~~

~~(3) date the person entered the program.~~

~~c. include the individual's services and supports needed and outcomes or goals as stated on the Individual Support Plan document which are relevant to the particular service.~~

~~d. identify individualized outcomes, or long term goals and short term objectives in major life areas which generally include, but are not limited to, self care, receptive language, mobility, self direction, capacity for independent living, and economic self-sufficiency.~~

~~6. Prior to the planning meeting, the provider shall ensure that each person receiving Division services will have had an appropriate assessment which identifies the individual's preferences, choices, strengths, and needed supports; however, if the assessment occurs, as a part of the person-centered planning process, at the time of the planning meeting, it does not have to be completed prior to the meeting.~~

~~a. Formal assessment documentation will be maintained in the individual record.~~

~~b. The assessment used must either be standardized or an agency prepared document which identifies the individual's preferences, strengths, and needed services and supports. Assessments shall include:~~

~~(1) a formal assessment instrument, or a well documented person-centered planning process such as Personal Futures Planning, etc.;~~

~~(2) input and observation from team members, including the individual receiving services and supports; and~~

~~(3) other pertinent information.~~

~~c. Assessments will be reviewed and updated annually prior to the planning meeting and findings will be shared with the team at the scheduled meeting; however, if the assessment review and update occur, as a part of the person-centered planning process, at the time of the planning meeting, they do not have to be completed prior to the meeting.~~

~~7. If using a person centered planning approach, specific outcomes shall be provided which relate to the individual's preferences and choices. If using the traditional behavioral approach, short term objectives in a specific skill area shall be established and prioritized in order to achieve long term goals. This traditional approach should also address the individual's preferences and choices as much as possible.~~

~~a. Outcomes shall be observable if using a person centered planning process (outcomes may not necessarily be written in measurable and behavioral terms). If using the traditional approach, objectives shall be measurable, observable, and written in behavioral terms. If the person has complex maladaptive behaviors, including all individuals receiving any type of residential service, level 5 or higher, or any type of day service, level 3 or higher, the Individual Plan must contain objectives to address these behaviors which are~~

~~measurable, observable, and written in behavioral terms. The following information must be included as it relates to either outcomes or objectives:~~

~~(1) For each outcome, a statement of the conditions under which the person will receive specific supports or services. For each objective, a statement of where, when, and under what conditions the person shall be expected to perform a task.~~

~~(2) The person's name.~~

~~(3) For each outcome, the current status of the expected observable outcome. For each objective, the baseline data, which is the level of the person's current performance.~~

~~(4) For each outcome, an observable indicator of when the outcome has been achieved. For each objective, the level of performance that the individual must exhibit in order to complete the objective.~~

~~8. For each outcome, a specific outline of actions to be taken by staff or others in providing supports or services to the individual. For each objective, training methods will be identified which outline what the staff will do to assist or support the individual to reach the identified objective.~~

~~a. The following information must be included as it relates to either outcomes or objectives:~~

~~(1) For both outcomes and objectives, the name of the responsible staff or person and their relationship to the individual.~~

~~(2) For outcomes, an outline of staff actions to be taken in providing services or supports to achieve the outcome. For objectives, a task analysis or sequential outline of training steps.~~

~~(3) For both outcomes and objectives, the level and type of assistance or supports to be rendered by the staff.~~

~~(4) For both outcomes and objectives, the method of withdrawing the level of assistance or supports (if applicable) as the person masters the objective or achieves the outcome.~~

~~(5) For outcomes, if applicable, the method of withdrawing or increasing supports as the person requires. For objectives, identification of the reinforcer(s) and any methodology to be used to withdraw the reinforcement when the objective is achieved.~~

~~(6) For outcomes, system to be used to track the status of observable indicators. For objectives, data collection to be used to record the individual's performance.~~

~~(7) For outcomes, a plan to maintain the desired observable outcome or transition the outcome to a system of natural supports, unless it is a one time achievement and does not require maintenance. For objectives, measures of maintenance and generalization of the desired skill.~~

~~b. Supports or training should be provided in a functional context and in the natural routine of daily living to include:~~

~~(1) Setting;~~

~~(2) Time period;~~

~~(3) Frequency; and~~

~~(4) Other relevant factors.~~

~~9. Monthly progress notes will be written by the provider for each outcome or objective to document the progress or lack of progress made by the individual receiving services and supports, utilizing the following guidelines:~~

~~a. For objectives, data reported will be substantiated with raw data collection sheets.~~

~~b. For both outcomes and objectives, necessary Individual Plan modifications will be discussed in the progress notes.~~

~~c. Progress notes must contain the responsible staff's signature, relationship to the individual, and date (day, month, year).~~

—10. The planning team members will sign the document to indicate approval of outcomes, or goals and objectives identified for the upcoming year.

— a. The Individual Plan document is signed at the annual planning meeting within the same month of the effective date on the original or previous Individual Plan.

— b. Signatures will include the name, date, and relationship of the team members to the individual.

— 11. A formal written review of the Individual Plan will occur annually and dated within the same month as the original or previous Individual Plan effective date and shall be documented in the Individual Support Plan annual review. The provider shall maintain documentation of the Individual Plan review in the individual record.

— 12. The effective date of the Individual Plan may serve as the time line for annual reviews rather than the Individual Plan team signature date. The planning team meeting may occur up to 30 days prior to the effective date. The team may meet to review the Individual Plan as often as the team determines necessary, but the Plan shall be reviewed at least annually, due within the same month as the original or previous Plan effective date.

— 13. Should the region case manager determine that the Individual Plan is not being implemented as outlined, or receives a complaint from the individual or legal guardian, the case manager shall implement the following corrective action:

— a. Step 1: Hold a conference with the provider and the individual or legal guardian if appropriate to review the problem, outcomes or objectives, and methods for possible corrections.

— b. Step 2: If resolution cannot be reached in Step 1, the case manager will hold a conference with the region supervisor, the region director, if applicable, the individual and the legal representative, if any, and the provider. The involved parties will attempt to resolve the problem.

— c. Step 3: If resolution is not reached, and following written notification to the provider, the case manager will inform the Division Contract Administrator and the Division will review the matter and take appropriate action.

— d. Step 4: If there is not resolution through the above process, or if the case manager is unable to negotiate a solution, the Department Hearing process will be followed (R539-2-5, Notice and Hearings for Service Changes).]1. The Person's Team will work with the Person to identify goals.

— A. The Person receiving supports or the Person's Representative determines the membership of the Team, which will include the Support Coordinator.

— B. The Team meets at least annually (within twelve months of last meeting), or more often as the Person or other members of the Team determine necessary.

— 2. The Person, Provider, and Family will assess, plan, implement and evaluate goals and supports for which they are responsible, as agreed upon and listed on the Action Plan (Form 1-16) in the planning meeting.

— 3. The Team will decide the level of detail required to describe the actions involved in the assessing, planning, monitoring and evaluating needed for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach will be demonstrated and documented in the Person's file.

— 4. If any interested party believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person/Representative, they should immediately contact the

Support Coordinator to resolve the issue by following the informal and, if necessary, the formal resolution process outlined in Division Policy 1-5, Notice and Hearings for Agency Action and 1-6, Consumer Service System Entry and Movement.

**KEY: social services, disabled persons[≠]**

**[October 16, 1995]2003**

**Notice of Continuation September 6, 2002**

**62A-5-103**



## Natural Resources, Wildlife Resources

### R657-33-6

#### Firearms and Archery Permits

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26056

FILED: 02/27/2003, 09:47

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Wildlife Board meetings conducted annually for taking public input and reviewing the division's bear program, and to make consistent the use of crossbows to take bear.

**SUMMARY OF THE RULE OR CHANGE:** Section R657-33-6 is being amended to correct and clarify that a person may not use a crossbow to take bear, except as provided in Rule R657-12.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 23-14-18 and 23-14-19

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment is for clarification. Therefore, the Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget.

❖ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment is for clarification. This amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment provides clarification on the equipment that may be used to take bear. DWR determines that there are no additional compliance costs associated with this amendment.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment does not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at [debbiesundell@utah.gov](mailto:debbiesundell@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2003

AUTHORIZED BY: Kevin Conway, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-33. Taking Bear.**

**R657-33-6. Firearms and Archery Equipment.**

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) a bow and arrows[~~—except a crossbow may not be used.~~].

(2) A person may not use a crossbow to take bear, except as provided in Rule R657-12.

**KEY: wildlife, bear[~~z~~], game laws**

**[~~February 16,~~] 2003**

**Notice of Continuation December 31, 2002**

**23-14-18**

**23-14-19**

**23-13-2**



**End of the Notices of Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

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## Corrections, Administration **R251-304** Contract Procedures

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26053  
FILED: 02/21/2003, 11:22

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 64-13-25 requires the Department to establish standards for the organization and operation of its programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None--There were no written comments received after the enactment of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to promote accountability and to ensure safe and professional operation of correctional programs and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER UT 84020-9549, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at [glduncan@utah.gov](mailto:glduncan@utah.gov)

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 02/21/2003



## Human Services, Administration, Administrative Services, Licensing **R501-16**

### Intermediate Secure Treatment Programs for Minors

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26055  
FILED: 02/26/2003, 13:21

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-2-101 provides for issuances of licenses upon compliance with rules as required for Human Service Programs such as Intermediate Secure Treatment Programs for Minors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no written comments received during the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is a continuing need for rules that provide for the protection and safety of the program's clients so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
ADMINISTRATION, ADMINISTRATIVE SERVICES,  
LICENSING  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at [jbohi@utah.gov](mailto:jbohi@utah.gov)

AUTHORIZED BY: Ken Stettler, Director

EFFECTIVE: 02/26/2003



## Pardons (Board Of), Administration

# R671-403

## Restitution

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26050  
FILED: 02/18/2003, 09:12

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 77-27-5 and 77-27-6 require the Board to enter rulings and to process restitution issues.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received pertaining to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R671-403 outlines Board procedure regarding the appropriate processing of restitution the state claims is owed by offenders. The rule lists when the Board may order and/or affirm court ordered restitution. In addition, the rule specifies due process rights afforded to offenders and victims during hearings. This rule is informative and explains the restitution process and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PARDONS (BOARD OF)  
ADMINISTRATION  
Room 300  
448 E 6400 S  
SALT LAKE CITY UT 84107-8530, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at [njohnson@utah.gov](mailto:njohnson@utah.gov)

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 02/18/2003



**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Alcoholic Beverage Control

#### Administration

No. 25886 (AMD): R81-1-17. Advertising.  
Published: January 15, 2003  
Effective: February 26, 2003

No. 25887 (AMD): R81-5-5. Advertising.  
Published: January 15, 2003  
Effective: February 26, 2003

### Commerce

No. 25822 (AMD): R151-46b. Department of Commerce  
Administrative Procedures Act Rules.  
Published: January 1, 2003  
Effective: February 18, 2003

### Corrections

No. 25885 (AMD): R251-304. Contract Procedures.  
Published: January 15, 2003  
Effective: February 19, 2003

### Health

#### Health Care Financing, Coverage and Reimbursement Policy

No. 25897 (AMD): R414-504. Nursing Facility Payments.  
Published: January 15, 2003  
Effective: February 17, 2003

### Insurance

#### Administration

No. 25870 (AMD): R590-76. Health Maintenance  
Organization and Limited Health Plans.  
Published: January 15, 2003  
Effective: February 26, 2003

### Natural Resources

#### Wildlife Resources

No. 25890 (AMD): R657-23. Process for Providing Proof  
of Completion of Hunter Education.  
Published: January 15, 2003  
Effective: February 15, 2003

No. 25892 (AMD): R657-33. Taking Bear.  
Published: January 15, 2003  
Effective: February 16, 2003

No. 25894 (R&R): R657-44. Big Game Depredation.  
Published: January 15, 2003  
Effective: February 16, 2003

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2003, including notices of effective date received through February 28, 2003, the effective dates of which are no later than March 15, 2003. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Facilities Construction and Management</u>					
R23-3	Authorization of Programs for Capital Development Projects	25639	R&R	01/02/2003	2002-23/3
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25964	5YR	01/15/2003	2003-3/62
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25783	AMD	02/04/2003	2003-1/3
R23-5	Contingency Funds	25955	5YR	01/15/2003	2003-3/62
R23-6	Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations	25956	5YR	01/15/2003	2003-3/63
R23-7	Utah State Building Board Policy Statement Master Planning	25770	REP	02/04/2003	2003-1/5
R23-8	Planning Fund Use	25640	REP	01/02/2003	2002-23/5
R23-9	Building Board State/Local Cooperation Policy	25957	5YR	01/15/2003	2003-3/63
R23-10	Naming of State Buildings	25962	5YR	01/15/2003	2003-3/64
R23-10	Naming of State Buildings	25784	AMD	02/04/2003	2003-1/5
R23-11	Facilities Allocation and Sale Procedures	25771	REP	02/04/2003	2003-1/7
R23-21	Division of Facilities Construction and Management Lease Procedures	25959	5YR	01/15/2003	2003-3/64
R23-24	Capital Projects Utilizing Non-appropriated Funds	25960	5YR	01/15/2003	2003-3/65



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Alcoholic Beverage Control</b>					
<u>Administration</u>					
R81-1-17	Advertising	25886	AMD	02/26/2003	2003-2/5
R81-5-5	Advertising	25887	AMD	02/26/2003	2003-2/8
R81-7-3	Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events	25650	AMD	01/24/2003	2002-24/6
<b>Commerce</b>					
<u>Administration</u>					
R151-14	New Automobile Franchise Act Rules	25624	AMD	01/02/2003	2002-23/6
R151-33	Pete Suazo Utah Athletic Commission Act Rule	25649	AMD	01/15/2003	2002-24/7
R151-35	Powersport Vehicle Franchise Act Rule	25724	NEW	01/15/2003	2002-24/9
R151-46b	Department of Commerce Administrative Procedures Act Rules	25822	AMD	02/18/2003	2003-1/8
<u>Occupational and Professional Licensing</u>					
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25922	5YR	01/13/2003	2003-3/65
R156-47b-302a	Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training	25651	AMD	01/16/2003	2002-24/10
R156-59	Professional Employer Organization Act Rules	25920	5YR	01/09/2003	2003-3/66
R156-60a	Social Worker Licensing Act Rules	25629	AMD	01/02/2003	2002-23/8
<u>Real Estate</u>					
R162-8-9	Disclosure Requirements	25663	AMD	01/16/2003	2002-24/11
R162-107	Unprofessional Conduct	25981	5YR	01/21/2003	2003-4/52
<b>Community and Economic Development</b>					
<u>Community Development, History</u>					
R212-1	Adjudicative Proceedings	25630	AMD	01/06/2003	2002-23/10
R212-1	Adjudicative Proceedings	25570	AMD	01/06/2003	2002-22/10
<b>Corrections</b>					
<u>Administration</u>					
R251-304	Contract Procedures	25885	AMD	02/19/2003	2003-2/9
R251-304	Contract Procedures	26053	5YR	02/21/2003	2003-6/17
<b>Education</b>					
<u>Administration</u>					
R277-470	Charter Schools	25726	AMD	01/15/2003	2002-24/12
R277-516	Library Media Certificates and Programs	25925	5YR	01/14/2003	2003-3/67
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### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

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