

UTAH STATE BULLETIN

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Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Governor's Executive Order 2005-0018: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is extremely high throughout the State of Utah;

WHEREAS, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment;

WHEREAS, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

WHEREAS, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment;

WHEREAS, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981,

NOW, THEREFORE, I, Jon M. Huntsman, Jr., Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of October 10, 2005, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of October 2005.

(State Seal)

Jon M. Huntsman, Jr.
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2005/0018

End of the Special Notices Section

NOTICES OF PROPOSED RULES

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 September 16, 2005, 12:00 a.m., and September 30, 2005, 11:59 p.m. are included in this, the October 15, 2005, 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 November 14, 2005. 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 February 12, 2006, 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.

The Proposed Rules Begin on the Following Page.

**Commerce, Occupational and
Professional Licensing**
R156-1
**General Rules of the Division of
Occupational and Professional
Licensing**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28254

FILED: 09/22/2005, 14:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes of this filing include: 1) adding an additional licensee list exemption to facilitate and streamline the implementation of S.B. 74; 2) move provisions clarifying the filing date of applications for licensure, clarifying the requirements for licensure that are applicable to applications for licensure, clarifying the issuance date of licensure, and specifying the term of licensure for licenses issued to applicants for activation of an inactive license, reinstatement of licensure and relicensure, from policy and procedure to rule; 3) establishing a renewal date for direct-entry midwives to facilitate the implementation of H.B. 25; 4) moving the renewal dates forward for various professions to better balance and time the two-year renewal cycle; 5) removing an unnecessary definition of unprofessional conduct; and 6) making technical changes. (DAR NOTE: S.B. 74 (2005) is found at UT L 2005 Ch 153, and was effective 05/02/2005. H.B. 25 (2005) is found at UT L 2005 Ch 299, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: A summary of this filing is as follows: 1) adds an additional licensee list exemption allowing for lists containing home telephone numbers and home addresses to be provided in response to a request from a person preparing for, participating in, or responding to a national, state, or local emergency; a public health emergency; or a declaration by the President of the United States or other federal official requesting public health-related activities; 2) clarifies the filing date of applications for licensure; 3) clarifies the requirements for licensure that are applicable to applications for licensure; 4) clarifies the issuance date of licensure; 5) specifies the term of licensure for licenses issued to applicants for activation of an inactive license, for reinstatement of licensure, and for relicensure issued during the last four months of a renewal cycle; 6) establishes a renewal date for direct entry midwives; 7) moves renewal dates forward a few months for engineers, geologists, land surveyors, pharmacy, building inspectors, contractors, electricians, plumbers, burglar alarm, deception detection, and contract security professions; 8) removes failure to comply with the Health Insurance Portability and Accountability Act (HIPAA) privacy rules as a definition of unprofessional conduct because: 1) it appears to make the Division the enforcement agency for HIPAA, when we have not been given funding or a directive to do so; and 2) it duplicates a more

encompassing definition at Subsection 58-1-501(2)(b); and 9) makes technical changes, including removing references to the term "assistant director", a title and position that no longer exists, and changing the title "enforcement counsel" to "regulatory and compliance officer" or "administrative law judge", respectively. The latter is the same person(s) with a redesignated title.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308, and Subsections 58-1-106(1)(a) and 58-1-501(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The state budget will see an impact with regard to moving the renewal date forward for selected professions. The same renewal fees will be collected but a few months later. In essence, licensees will receive a several month extension of their current license at no cost. In the case of building inspector, contractor, electrician, plumber, burglar alarm, deception detection, and security professions, we are moving the renewal cycle away from the end of the fiscal year, which currently causes renewal fees to be collected across two fiscal years. At the outset, this will cause a spike downward and upward in fee revenues from one fiscal year to the next, as we move away from a fiscal year-end renewal date. The Division will also incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any printing costs incurred will be absorbed in the Division's current budget. The Division will also incur a one time cost of approximately \$12,500 (50,000 licensees at \$0.25 bulk mail rate) to mail a notice to the affected professions notifying them of the new expiration date of their licenses. This mailing cost will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments; therefore no costs or savings are anticipated. Proposed amendments only apply to licensees and potential licensees in regulated professions of the Division.

❖ OTHER PERSONS: The Division does not anticipate any costs or savings to the licensees or potential licensees in regulated professions of the Division as a result of these proposed amendments. Licensees in certain professions identified above will receive a several month extension of licensure at no cost as noted above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs or savings to the licensees or potential licensees in regulated professions of the Division as a result of these proposed amendments. Licensees in certain professions identified above will receive a several month extension of licensure at no cost as noted above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing makes various technical and clarifying amendments. In addition, the rule filing codifies and clarifies existing practice as to the filing date, the applicable law and the issuance date of applications.

No fiscal impact to businesses is anticipated as a result of such technical and clarifying provisions. Another amendment permits the release of information regarding licensees as

necessary in certain emergency situations as identified in S.B. 74, 2005 Legislative Session. No additional fiscal impact to businesses is foreseen beyond those addressed in S.B. 74. Jason P. Perry, Acting Executive Director

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
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:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

(4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(5) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(6) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(8) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division ~~[enforcement counsel]~~regulatory and compliance officer, or if the division ~~[enforcement counsel]~~regulatory and compliance officer is

unable to so serve for any reason, ~~[the assistant director]~~ a bureau manager designated by the regulatory and compliance officer, or if both the division ~~[enforcement counsel]~~ regulatory and compliance officer and the ~~[assistant director]~~ designated bureau manager are unable to so serve for any reason, ~~[the]~~ a department [enforcement counsel] administrative law judge.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

(18) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(1)(f).

(20) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(21) "Probation" means disciplinary action placing terms and conditions upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(22) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(23) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(24) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(25) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(26) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

(27) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(28) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(29) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(30) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(31) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(32) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

(33) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for

which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research; ~~and~~

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a), the division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the division, if the reason for the request is deemed by the division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, ~~the assistant director~~ a bureau manager designated by the regulatory and compliance officer is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively,

determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h), (j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-201(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in

Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date

of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary

hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-301a. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the division's Internet Renewal System.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) audiologist;
- (c) certified nurse midwife;
- (d) certified public accountant emeritus;
- (e) certified registered nurse anesthetist;
- (f) certified court reporter;
- (g) certified social worker;
- (h) chiropractic physician;
- (i) clinical social worker;
- (j) contractor;
- (k) deception detection examiner;
- (l) deception detection intern;
- (m) dental hygienist;
- (n) dentist;
- (o) direct-entry midwife;
- (~~o~~p) genetic counselor;
- (~~p~~q) health facility administrator;
- (~~q~~r) hearing instrument specialist;
- (~~r~~s) licensed substance abuse counselor;
- (~~s~~t) marriage and family therapist;
- (~~t~~u) naturopath/naturopathic physician;
- (~~u~~v) optometrist;
- (~~v~~w) osteopathic physician and surgeon;
- (~~w~~x) pharmacist;
- (~~x~~y) pharmacy technician;
- (~~y~~z) physician assistant;
- (~~z~~aa) physician and surgeon;
- (~~aa~~bb) podiatric physician;
- (~~bb~~cc) private probation provider;
- (~~cc~~dd) professional counselor;
- (~~dd~~ee) psychologist;
- (~~ee~~ff) radiology practical technician;
- (~~ff~~gg) radiology technologist;
- (~~gg~~hh) security personnel;

- (~~hh~~ii) speech-language pathologist; and
- (~~ii~~jj) veterinarian.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Animal Euthanasia Agency	May 31	odd years
(4)3) Alternate Dispute Resolution Provider	September 30	even years
(5)4) Architect	May 31	even years
(6)5) Athlete Agent	September 30	even years
(7)6) Audiologist	May 31	odd years
(8)7) Building Inspector	July 31 <u>November 30</u>	odd years
(9)8) Burglar Alarm Security	July 31 <u>November 30</u>	even years
(10)9) C.P.A. Firm	September 30	even years
(11)10) Certified Court Reporter	May 31	even years
(12)11) Certified Dietitian	September 30	even years
(13)12) Certified Nurse Midwife	January 31	even years
(14)13) Certified Public Accountant	September 30	even years
(15)14) Certified Registered Nurse Anesthetist	January 31	even years
(16)15) Certified Social Worker	September 30	even years
(17)16) Chiropractic Physician	May 31	even years
(18)17) Clinical Social Worker	September 30	even years
(19)18) Construction Trades Instructor	July 31	odd years
(20)19) Contractor	July 31 <u>November 30</u>	odd years
(21)20) Controlled Substance Precursor Distributor	May 31	odd years
(22)21) Controlled Substance Precursor Purchaser	May 31	odd years
(23)22) Controlled Substance Handler	May 31	odd years
(24)23) Cosmetologist/Barber	September 30	odd years
(25)24) Cosmetology/Barber School	September 30	odd years
(26)25) Deception Detection	July 31 <u>November 30</u>	even years
(27)26) Dental Hygienist	May 31	even years
(28)27) Dentist	May 31	even years
(28) Direct-entry Midwife	September 30	odd years
(29) Electrician	Apprentice, Journeyman, Master,	
	Residential Journeyman,	
	Residential Master	July 31 <u>November 30</u> even years
(30) Electrologist	September 30	odd years
(31) Electrology School	September 30	odd years
(32) Environmental Health Scientist	May 31	odd years
(33) Esthetician	September 30	odd years

(34)	Esthetics School	September 30	odd years
(35)	Factory Built Housing Dealer	September 30	even years
(36)	Funeral Service Director	May 31	even years
(37)	Funeral Service Establishment	May 31	even years
(38)	Genetic Counselor	September 30	even years
(39)	Health Care Assistant	May 31	odd years
(40)	Health Facility Administrator	May 31	odd years
(41)	Hearing Instrument Specialist	September 30	even years
(42)	Landscape Architect	May 31	even years
(43)	Licensed Practical Nurse	January 31	even years
(44)	Licensed Substance Abuse Counselor	May 31	odd years
(45)	Marriage and Family Therapist	September 30	even years
(46)	Massage Apprentice, Therapist	May 31	odd years
(47)	Master Esthetician	September 30	odd years
(48)	Nail Technologist	September 30	odd years
(49)	Nail Technology School	September 30	odd years
(50)	Naturopath/Naturopathic Physician	May 31	even years
(51)	Occupational Therapist	May 31	odd years
(52)	Occupational Therapy Assistant	May 31	odd years
(53)	Optometrist	September 30	even years
(54)	Osteopathic Physician and Surgeon	May 31	even years
(55)	Pharmacy (Class A-B-C-D-E)	May 31	September 30
(56)	Pharmacist	May 31	September 30
(57)	Pharmacy Technician	May 31	September 30
(58)	Physical Therapist	May 31	odd years
(59)	Physician Assistant	May 31	even years
(60)	Physician and Surgeon	January 31	even years
(61)	Plumber		
	Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	November 30
(62)	Podiatric Physician	September 30	even years
(63)	Pre Need Funeral Arrangement Provider	May 31	even years
(64)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(65)	Private Probation Provider	May 31	odd years
(66)	Professional Counselor	September 30	even years
(67)	Professional Engineer	December	March 31
(68)	Professional Geologist	December	March 31
(69)	Professional Land Surveyor	December	March 31
(70)	Professional Structural Engineer	December	March 31
(71)	Psychologist	September 30	even years
(72)	Radiology Practical Technician	May 31	odd years
(73)	Radiology Technologist	May 31	odd years
(74)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(75)	Registered Nurse	January 31	odd years
(76)	Respiratory Care Practitioner	September 30	even years
(77)	Retail Pharmacy	May 31	odd years
(78)	Security Personnel	July 31	November 30
(79)	Social Service Worker	September 30	even years
(80)	Speech-Language Pathologist	May 31	odd years
(81)	Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Professional Employer Organization registrations expire every year on September 30.

(f) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(g) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee ~~restricting~~ limiting practice to areas in which the licensee has the required competency, abilities and education.

R156-1-308L. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-~~304~~310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words

"limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) ~~[failing to conform to the Privacy Rules of the federal Health Insurance Portability and Accountability Act (HIPAA) as a licensed health care provider; or~~

~~—(7)—~~ failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

KEY: diversion programs, licensing, occupational licensing

[October 18, 2004]2005

Notice of Continuation May 2, 2002

58-1-106(1)(a)

58-1-308

58-1-501(4)



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-2A

Inpatient Hospital Services

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE No.: 28258

FILED: 09/26/2005, 16:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to clarify inpatient hospital services policy and to implement it in rule pursuant to recent legislation (H.B. 126 (2003)) found in Subsection 26-18-3(2)(a). (DAR NOTE: H.B. 126 (2003) is found at UT L 2003 Ch 324, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: The new (reenacted) rule includes criteria for client eligibility not specified in the old rule. It also includes a section that specifies physician requirements for hospital admissions that are not contained in the old rule. Also, this rule specifically lists criteria for service coverage which states that the Department does not pay for physician services rendered by a non-Medicaid provider. In addition, the new rule includes language regarding Medicaid coverage under the Diagnosis Related Group (DRG), limitations for hyperbaric oxygen therapy, and specifies criteria

for pain management, observation services, and diagnostic evaluation. Finally, this rule adds a reimbursement section that explains the reimbursement methodology for inpatient hospital services and the Department's reimbursement policy for inpatient admissions. The old rule lists the contractors that are assigned to provide inpatient psychiatric services to specified counties within the prepaid mental health plan, while the new rule does not specifically list this information. The old rule also contains language regarding limited service for cosmetic, reconstructive, or plastic surgery as well as language that limits inpatient hospital care for the treatment of alcoholism or drug dependency. The new rule does not list these services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3, and 42 CFR 440.10

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no impact to the state budget associated with this rulemaking because the policy for inpatient hospital services is only clarified and implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this rulemaking because the policy for inpatient hospital services is only clarified and implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

❖ **OTHER PERSONS:** There is no budget impact to other persons as a result of this rulemaking because the policy for inpatient hospital services is only clarified and implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the policy for inpatient hospital services is only clarified and implemented in rule pursuant to recent legislation found in Subsection 26-18-3(2)(a).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule updates and simplifies the rules on inpatient hospital services. No changes to the program are reflected in the rule, therefore there should be no fiscal impact on regulated hospitals. David N. Sundwall, MD, Executive Director

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:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-2A. Inpatient Hospital Services.

[R414-2A-100. Authority and Purpose.

- (1) This rule defines the scope of inpatient hospital benefits available for the care and treatment of Medicaid clients who meet the level of care criteria for admission to an acute care general hospital for treatment of disorders other than mental disease.
- (2) Inpatient hospital services are required under Section 1901 et seq. and Section 1905(a)(1) of the Social Security Act, and by 42 CFR 440.10 (October 1, 1991, edition).
- (3) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(3) and (4) and by 42 CFR 447.15 and 447.50, Oct. 1, 2000 ed.

R414-2A-300. Program Access Requirements.

- (1) Each hospital providing inpatient services must have a utilization review plan, as described in 42 CFR 482.30 (October 1, 1991, edition), which is incorporated by reference.
- (2) The attending physician or other practitioner of the healing arts must sign a physician attestation statement that meets the requirements of 42 CFR 412.46 (October 1, 1991, edition), which is incorporated by reference.
- (3) The attending physician must certify and recertify the need for inpatient care as described in 42 CFR 441.152 and 456.60 (October 1, 1991, edition), which are incorporated by reference.
- (4) All hospital admissions are subject to review by the department for appropriateness and medical necessity as detailed in R414-2A.
- (5) For purposes of reimbursement, the day of admission is counted as a full day; the day of discharge is not counted.
- (6) When a patient receives SNF level, ICF level, or other sub-acute care in an acute care hospital or in a hospital with swing-bed approval, payment shall be made at the SNF or ICF rate.
- (7) Inpatient hospital psychiatric services are covered Medicaid services for clients who live in the counties identified in Table 1 only when such services are coordinated through the contractor identified for the specified county:

TABLE 1

I. Counties:	Salt Lake County
	Summit County
Contractor:	Salt Lake Valley Mental Health,
	Salt Lake City, Utah
II. Counties:	Carbon County
	Emery County
	Grand County
Contractor:	Four Corners Community Mental Health Center,
	Price, Utah
III. Counties:	Beaver County
	Garfield County
	Kane County
	Iron County
	Washington County

~~Contractor: Southwest Utah Mental Health Center,
St. George, Utah~~

R414-2A-400. Services.

- (1) ~~Inpatient hospital services encompass all medically necessary and therapeutic Medicaid services and supplies that are ordered by a physician or other practitioner of the healing arts and are appropriate for the adequate diagnosis and treatment of a patient's illness. These services include nursing, therapy services, use of hospital facilities, the technical portion of clinical laboratory and radiology services, and medical social services. These services shall be furnished by the hospital.~~
- (2) ~~Drugs and biologicals, approved by the federal Food and Drug Administration and appropriate for inpatient care, are covered Medicaid services based on individual need and a physician's written order.~~
- (3) ~~Supplies, appliances, and equipment required for the care and treatment of a client during an inpatient stay are covered Medicaid services based on individual need and a physician's written order.~~
- (4) ~~Inpatient hospital intensive physical rehabilitation services are covered Medicaid services, as specified in R414-2B.~~
- (5) ~~Organ transplantation services are covered Medicaid services, as specified in R414-10A.~~
- (6) ~~Inpatient hospital psychiatric services are covered Medicaid services only when the severity of a patient's illness and the intensity of service required are such that these services cannot be provided in an alternative setting.~~
- (7) ~~Cosmetic, reconstructive, or plastic surgery is limited to:~~
 - (a) ~~correction of a congenital anomaly;~~
 - (b) ~~restoration of body form following an accidental injury; or~~
 - (c) ~~revision of severe disfiguring and extensive scars resulting from neoplastic surgery.~~
- (8) ~~Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.~~
- (9) ~~Abortion procedures are limited to those certified as medically necessary, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203 (October 1, 1991, edition), which is incorporated by reference.~~
- (10) ~~Sterilization and hysterectomy procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F (October 1, 1991, edition), which is incorporated by reference.~~

R414-2A-500. Limitations.

- (1) ~~Treatment of syndromes or disorders for which no specific therapies have been identified except for therapies that border on behavior modification or experimental or unproven practices, or for which medical necessity, appropriate utilization, and cost effectiveness cannot be assured, are not covered Medicaid services. The treatments are:~~
 - (a) ~~treatment of sleep apnea, or sleep studies, or both;~~
 - (b) ~~pain clinic services;~~
 - (c) ~~treatment of eating disorders.~~
- (2) ~~Miscellaneous supplies, dressings, durable medical equipment, and drugs are not covered take-home supplies.~~
- (3) ~~Cosmetic, reconstructive, and plastic surgery procedures other than those specified in R414-2A-400(7), including all related services, supplies, and any institutional costs, are not covered Medicaid services.~~

~~—(4) An inpatient admission for 24 hours or more solely for observation or diagnostic evaluation is not a covered Medicaid service.~~

~~—(5) Nonphysician psychosocial counseling services are not covered Medicaid services.~~

~~—(6) An off-unit pass is limited to an inpatient rehabilitation or psychiatric admission pursuant to a written order by the attending physician, planned by the physician or interdisciplinary team through established goals and objectives, and adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's plan of care.~~

~~—(7) A therapeutic leave of absence is limited to inpatient rehabilitation admissions pursuant to a written order by the attending physician, planned by the physician or interdisciplinary team through established goals and objectives, and adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's plan of care.~~

~~—(8) Except as provided in subsections (c) through (e), a Medicaid client must pay a co-insurance payment for inpatient services:~~

~~—(a) The Medicaid client out of pocket expense is limited to \$220 per calendar year for inpatient hospital services.~~

~~—(b) The Department shall deduct \$220 from the reimbursement paid to the provider that provides the initial inpatient service.~~

~~—(c) Medicaid clients in the following categories are exempt from co-insurance requirements~~

~~—(1) children;~~

~~—(2) pregnant women;~~

~~—(3) institutionalized individuals; and~~

~~—(4) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families standard payment allowance.~~

~~—(d) Emergency services are exempt from the co-insurance payment requirements.~~

~~—(e) Inpatient services for family planning purposes are exempt from the co-insurance requirements.~~

R414-2A-600. Prior Authorization.

~~—(3) All services related to organ transplantations require prior authorization.~~

~~—(4) All inpatient psychiatric and rehabilitation services require prior authorization.]~~

R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness requires 24 hours or more of continuous care in a hospital.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other

than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of osteopathy, a doctor of dental surgery, or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours.

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a hospital facility in which the hyperbaric unit has been accredited by the Joint Commission on Healthcare Organizations or the Undersea Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment under the DRG. Payment for physician services provided by providers who are not paid by the hospital is governed by R414-10, Physician Services.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.

(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, the Department may review and evaluate both claims to determine if, based on severity of illness, intensity of service, and cost effectiveness, the claims should be combined into a single DRG payment or paid separately.

(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:

(a) pregnancy;

(b) chemotherapy; and

(c) hyperbilirubinemia appearing in newborn infants within the first week of life.

(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(8) If an observation stay meets the intensity and severity for inpatient hospitalization and exceeds 24 hours, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

KEY: [m]Medicaid

[February 1, 2002]2005

Notice of Continuation November 26, 2002

26-1-5

[26-1-15

]26-18-3[(2)

26-18-5(3)

26-18-5(4)

26-18-6]

26-18-3.5



Health, Health Systems Improvement,
Child Care Licensing

R430-2

General Licensing Provisions, Child
Care Facilities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28245

FILED: 09/19/2005, 16:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There have been changes in the application and renewal process in an effort to increase efficiency in the office and simplify the process for providers. The intent of the changes is to have a

rule that reflects current practice and to have it easily understood by staff and providers.

SUMMARY OF THE RULE OR CHANGE: This rule reflects the changes in the application and renewal process. The process is simplified.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated cost or savings. The reason for changing this rule is to reflect changes in the license application and renewal process. These changes have no effect on the budget for processing initial or renewal applications.

❖ LOCAL GOVERNMENTS: The local health departments will now be doing kitchen inspections of all licensed family providers. There are approximately 1,065 licensed family providers. Local health departments will charge providers for inspections. Thus, the impact should be neutral on local government.

❖ OTHER PERSONS: All licensed family providers will now be required to have a kitchen inspection with initial and renewal applications. The local health departments have estimated this cost to average about \$50. For the 1,065 family providers the aggregate cost is estimated at \$53,300. This cost and the costs to all other providers may be offset somewhat by the more efficient and simple process for licensing reflected in this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All licensed family providers will now be required to have a kitchen inspection at an average cost of \$50 with initial and renewal applications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The major fiscal impact of this change will be the fee paid to local health departments for kitchen inspections at licensed family providers. This cost seems prudent and necessary to protect children from food borne disease and give consumers reasonable assurance that government is monitoring an area that parents may not be able to assess without the assistance of the experts in local health departments. Public comment on this fiscal impact will be carefully monitored. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
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:

Donna Thomas at the above address, by phone at 801-538-9294, by FAX at 801-538-6325, or by Internet E-mail at donnathomas@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-2. General Licensing Provisions, Child Care Facilities.

R430-2-1. ~~Legal~~ Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It defines the standards that a person(s) must follow to obtain a license for a child care facility.

R430-2-2. ~~Purpose.~~

~~—The purpose of this rule is to define the standards that child care facilities must follow in order to obtain a license. Except as exempted by Utah Code Section 26-39-106, no person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a child care facility in this state without first obtaining a license from the Department.~~ **Informal Discussions.**

Independent of any administrative proceeding, an applicant may request at any time to discuss a Department decision with Department staff.

R430-2-3. Initial Application.

(1) An applicant for a license shall submit to the Utah Department of Health a completed~~file a Request for Agency Action/~~~~[L]~~license ~~[A]~~application ~~[with the Utah Department of Health]~~ on a form furnished by the Department.

(2) Each applicant shall comply with all regulations, ordinances, and codes, zoning, fire, safety, sanitation, building and licensing laws~~, regulations, ordinances, and codes~~ of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them to the Department as part of the ~~completed~~ application ~~to the licensing agency~~:

(a) ~~[A]~~a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes ~~with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred~~;

(b) ~~[A]~~a satisfactory report by a local health department for facilities providing food service ~~at initial application and upon a change of ownership~~; and

(c) a city business license if required ~~Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling~~;

(3) The ~~licensee~~ applicant shall ~~comply with the following requirements~~:

(a) ~~[L]~~list all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) ~~[P]~~provide the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) ~~[L]~~list, for all owners, all child care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest[;].

(4) The licensee shall provide the following written assurances on all individuals listed in R430-2-3(3):

(a) ~~[N]~~none of the persons has been convicted of a felony;

(b) ~~[N]~~none of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a child care facility;~~[-and]~~

(c) ~~[N]~~none of the persons within the five years prior to the date of application had an interest in a licensed child care facility that has been closed as a result of a settlement agreement resulting from a license revocation; and

(d) ~~[N]~~none of the persons has been convicted of child abuse, neglect, or exploitation.

(5) The applicant shall submit background clearance documents as required in R430-6.

(6) The applicant shall submit with the completed application a non-refundable license fee as established in accordance with Subsection 26-39-104(1)(c).

~~[R430-2-4. License Fee.~~

~~— The licensee shall submit a license fee as established in accordance with Subsection 26-39-104(1)(c) with the completed application form. A current fee schedule is available from the Department upon request. The Department shall assess late fees according to the fee schedule.~~

R430-2-5. Additional Information.

~~— The Department may review policy and procedure manuals prior to issuing a license to determine compliance with licensure.~~

[R430-2-6]4. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application[~~packet or within 12 months of the date the first component of an application packet is received~~].

(2) The applicant must pay fees and reapply for a ~~license~~[~~licensure~~] if the [~~application packet is not completed within 12 months~~]applicant does not complete the application including all necessary submissions within six months of first submitting any portion of an application.

~~[(3) The Department shall review the policy and procedure manual within 60 days after submittal.~~

~~—(4)[(3) Upon verification of compliance with licensing [requirements]rules, the Department shall issue a [provisional] license.~~

~~[(5)][(4) The Department shall issue a written [notice of agency] decision denying a license if the applicant and the facility are [is] not in compliance with the [applicable laws,]rules[, or regulations].]~~

~~—(6) An applicant who was denied licensure may reapply for initial licensure as a new applicant and shall be required to initiate a new request for agency action.~~

~~—(7) The Department shall assess an administrative fee on all denied license applications. The Department shall subtract the fee from any fees submitted as part of the application packet and refund the balance to the applicant.]~~

(5) Pursuant to R501-12-4(8)(h), a provider may not be licensed to provide foster care and child care at the same time.

R430-2-5. License Extension.

A licensee that fails to renew its license by the license expiration date may have an additional 30 days to complete the renewal if the licensee pays a late fee.

~~[R430-2-7. License Provisions.~~

~~—(1) The license is not assignable or transferable.~~

~~—(2) Each license is the property of the Department. The licensee shall return the license within five days after notifying the Department of closure or upon the request of the Department.~~

~~—(3) The facility shall post the license on the facility premises in a place readily visible and accessible to the public.~~

[R430-2-8]6. Expiration and Renewal.

(1) Each ~~[standard]~~license ~~[shall]~~expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the Department.~~[If the facility is operating under a conditional license for a period extending beyond the expiration date of the current license the Department shall establish a new expiration date. A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.]~~

(2) The licensee shall submit a completed[~~file a Request for Agency Action/~~][~~L~~]license [~~A~~]application[~~form~~], applicable fees[;] and [~~clearances~~]a satisfactory report by a local health department for facilities providing food service to the Department [~~15~~]30 days before the current license expires.

~~[(3) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.~~

~~—(4)[(3) The Department shall not renew a license for a child care facility [who]that discontinues child care services.[The child care facility shall request an initial license.]~~

R430-2-8. Change of Ownership.

(1) A licensee whose ownership or controlling interest has changed must submit a completed license application, applicable clearances, and fees to the Department 30 days prior to the proposed change. The licensee shall obtain the following clearances and submit them to the Department as part of the application:

(a) a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes;

(b) a satisfactory report by a local health department for facilities providing food service; and

(c) a city business license if required.

(2) A change in ownership that requires action under subsection (1) includes any change that:

(a) transfers the business enterprise to another person or firm;

(b) is a merger with another business entity if the directors or principals in the merged entity differs by 49 percent or more from the directors or principals of the original licensee; or

(d) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 49 percent or more from the board of the original licensee.

(3) A transfer between departments of government agencies for management of a government-owned childcare facility is not a change of ownership.

(4) Before the Department may issue a new license for a change of ownership, the prospective licensee shall document that:

~~(a) all documents required by rules applicable to the prior licensee remain in the facility and have been transferred to the custody of the new licensee; and~~

~~(b) the prospective licensee has adopted the existing policies and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before the change of ownership occurs;~~

~~(5) The Department shall not issue a new license until the prospective licensee corrects all previously cited and not yet corrected violations. The prospective licensee may request a new correction date before the change of ownership becomes effective.~~

~~(6) When the Department verifies that the facility is in compliance with all licensing rules, the Department shall issue a new license effective the date that the Department determines compliance.~~

~~[R430-2-9. New License Required.~~

~~(1) The licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:~~

~~(a) Occupancy of a new or replacement facility.~~

~~(b) Change of ownership.~~

~~(2) Before the Department may issue a new license for a change of ownership, the prospective licensee shall provide documentation that:~~

~~(a) All child care records, personnel records, staffing schedules, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.~~

~~(b) The existing policy and procedures manual has been adopted by the prospective licensee, or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.~~

~~(c) The licensee can submit written documentation of the right to use the property.~~

~~(3) The prospective licensee is responsible to correct all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee.~~

~~(a) The prospective licensee may submit a revised plan of correction to be reviewed for approval by the Department, before the change of ownership becomes effective.~~

~~(b) Failure to correct deficiencies by the new licensee may result in sanction action or revocation of the license.~~

~~(4) If a license is issued to the new owner, the previous licensee shall return his license to the Department.~~

~~(5) When the Department verifies that the facility is in compliance with all applicable licensure rules, the Department may issue a new license effective the date that the Department determines compliance.~~

~~[R430-2-10]2. Change in License[Licensure Status].~~

~~(1) The licensee shall submit a completed [Request for Agency Action]/[L]license [A]application to amend or modify an existing license[licensure status] at least 30 days before any of the following proposed or anticipated changes:~~

~~(a) [I]increase or decrease of licensed capacity[-];~~

~~(b) [C]change in name of facility[-];~~

~~(c) [C]change in license category[-];~~

~~(d) [C]change of license classification[-];~~

~~(e) [C]change in [administrator for centers]center director[-];~~

~~(f) change in name of licensee; and~~

~~(g) change in area where child care is provided or a change in interior usable play space.~~

~~(2) An increase of licensed capacity may [incur]require payment of an additional license fee[if the increase exceeds the maximum number of units in the fee category division of the existing license]. This fee [shall be]is the difference in the license fee for the existing and proposed capacit[y]ies.~~

~~(3) The Department may issue an amended or modified license when the Department verifies that the licensee and facility are in compliance with all [applicable licensure]licensing rules. The expiration date of the amended license remains the same as the prior license.~~

~~R430-2-10. License Transferability, Posting.~~

~~(1) A license is not assignable or transferable.~~

~~(2) The licensee shall post the license on the facility premises in a place readily visible and accessible to the public.~~

~~R430-2-11. Voluntary Closure[Facility Ceases Operation].~~

~~A licensee that voluntarily ceases operation shall:~~

~~(1) [N]otify the Department and the children's families at least 30 days before the effective date of closure[-]; and~~

~~(2) [M]ake provision for the safe keeping of records.[~~

~~(3) Return the license to the Department within five days after the facility ceases operation.]~~

~~[R430-2-12. Provisional License.~~

~~(1) A provisional license is an initial license issued to a licensee for a probationary period:~~

~~(a) In granting a provisional license, the Department shall assure that the facility has the potential to provide services and shall be in full compliance with licensure rules during the six month period.~~

~~(b) The department shall issue a provisional license for six months, and shall not issue more than one provisional license to any child care facility in any 12 month period.~~

~~(c) Provisional licenses are nonrenewable.~~

~~(2) If the licensee fails to meet terms and conditions of licensure before the expiration date of the provisional license, the provisional license automatically expires.~~

~~R430-2-13. Conditional License.~~

~~(1) A conditional license is a remedial license issued to a licensee found to have:~~

~~(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction,~~

~~(b) more than three cited repeat Class I or II violations from the previous inspection, or~~

~~(c) failure to fully comply with administrative procedures for licensing.~~

~~(2) A standard license is automatically revoked when the Department issues a conditional license.~~

~~(3) The Department may not issue a conditional license after the expiration of a provisional license.~~

~~(4) In granting a conditional license, the Department shall assure that the lack of full compliance is not likely to immediately harm the health and safety of the children.~~

~~(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.~~

—(6) The Department shall set conditions whereby the licensee must comply with a plan of correction.

—(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the conditional license automatically expires.

R430-2-14. Standard License.

—The Department may issue a standard license upon completion of the following:

—(1) the licensee meets the conditions attached to a provisional or conditional license;

—(2) the licensee corrects the identified rule violations; or

—(3) the facility assures the Department that it complies with R430-2-8 and R430-2-9.

R430-2-15. Variances.

—(1) A licensee may request a variance from state rules at any time.

—(2) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

—(3) The Department may require additional information from the facility before acting on the request.

—(4) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

—(5) If the Department grants a request, the Department shall amend the license in writing to indicate the approval. The licensee shall keep a copy of the approved variance on file in the facility and make it available to all interested parties on request.

—(6) The Department may grant variances for specific amounts of time and renew variances upon request of the licensee.

—(7) The Department may impose conditions upon granting a variance to assure acceptable levels of health and safety.

—(8) The Department may limit the duration of any variance.

—(9) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

—(10) The Department may issue a notice of agency action to revoke a variance if:

—(a) The variance could adversely affect the health or safety of the children.

—(b) The facility fails to comply with the conditions of the variance as granted.

—(c) The licensee notifies the Department in writing that he wishes to relinquish the variance and be subject to the rule previously varied.

—(d) There is a change in statute, rule, or case law affecting the reason for the variance.

R430-2-16. Deemed Status.

—The Department may grant deemed status to facilities accredited by the National Academy of Early Childhood Programs, (NAEYC), or National Accreditation Commission for Early Care and Education Programs, National Association for Family Child Care (NAFCC) or National Early Childhood Program Accreditation in lieu of the annual licensing inspection by the Department upon completion of the following:

—(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

—(a) Initiate deemed status;

—(b) Continue deemed status; or

—(c) Relinquish deemed status during the licensing year of application.

—(2) This request constitutes written authorization for the Department to attend the exit conference.

—(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

—(a) Accreditation Certificate;

—(b) Survey reports and recommendations; and

—(c) Progress reports of all corrective actions underway or completed in response to the accrediting body's action or Department recommendations.

—(4) The Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes, including:

—(a) annual and follow-up inspections;

—(b) investigation of complaints; and

—(c) verification of the following:

—(i) violations of state law, rule or standard identified in the accrediting body's survey; or

—(ii) violations of state law, rule or standard identified in the Department's survey.

—(5) The Department may annually conduct validation inspections of facilities accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the licensing rules, the provisions relating to an annual inspection shall apply.

R430-2-17. Transition.

—(1) The licenses for all facilities licensed as of June 30, 1997 shall expire by virtue of this rule.

—(2) Licenses issued by the Department of Human Services in May and June of 1997 are reissued as provisional licenses by the Department of Health from July 1, 1997 to December 31, 1997.

—(3) All other licenses issued by the Department of Human Services shall be extended by the Department of Health until their existing expiration date.

KEY: child care facilities

[April 12, 2004]2005

Notice of Continuation December 19, 2002

26-39

26-21-12

26-21-13



**Health, Health Systems Improvement,
Child Care Licensing**

R430-3

**General Child Care Facility Rules
Inspection and Enforcement**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28246

FILED: 09/19/2005, 17:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There have been changes in inspection and enforcement practices as a result of concerns expressed by providers. Clarification was needed in some sections of current rule. The intent of the changes is to have a rule that reflects current practice and to have it easily understood by staff and providers.

SUMMARY OF THE RULE OR CHANGE: The rules reflect changes in the inspection and enforcement practices. Previously there were various classes of violations. Consistent enforcement was difficult. The new language provides for high risk for harm violations and all others. The Department practice of providing technical assistance is explained. The Department's policy for granting variances is clarified, with a ban on variances for background screening requirements. Consequences for not allowing Department personnel to conduct inspections are set forth. Potential penalties for violations of the rule are set forth.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Department has already implemented many of the practices set forth in this proposed rule. Costs to date for implementation have been met within existing budgets. No additional costs are anticipated.

❖ **LOCAL GOVERNMENTS:** Local governments that provide child care should not experience costs as a result of this rulemaking. Savings may be experienced as licensors provide technical assistance to achieve compliance in non-high risk areas. Only providers that are unable to achieve and maintain compliance will need to worry about the penalties set forth in the statute and this rule.

❖ **OTHER PERSONS:** Non-government providers of child care should not experience costs as a result of this rulemaking. Savings may be experienced as licensors provide technical assistance to achieve compliance in non-high risk areas. Only providers that are unable to achieve and maintain compliance will need to worry about the penalties set forth in the statute and this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule reflects current practice in child care regulation in most instances. Individual provider compliance costs are expected to be minimal or non-existent.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulation of child care has come under significant legal and legislative scrutiny in the past years. This rule reflects the best efforts of the State Health Department to assure that the inspection process is fair and reasonable, while still enforcing state law aggressively. I agree that the fiscal impact of this rule on business should be minimal. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,

CHILD CARE LICENSING
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:
Donna Thomas at the above address, by phone at 801-538-9294, by FAX at 801-538-6325, or by Internet E-mail at donnathomas@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-3. General Child Care Facility Rules Inspection and Enforcement.

R430-3-1. Legal Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. It provides criteria to ensure that sanctions are applied consistently and appropriately.

R430-3-2. [Purpose.

~~— This rule delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. These provisions provide criteria to ensure that sanctions are applied consistently and appropriately.~~ **[Informal Discussions.**

Independent of any administrative proceeding, a licensee may request at any time to discuss a Department decision with Department staff.

[R430-3-3. Statement of Findings.

~~— (1) The Department may inspect each licensed facility at least once during each year to determine compliance with the applicable rules.~~

~~— (2) If the Department has reason to believe that a child care facility is in violation of Title 26, Chapter 39, or any of the rules governing child care, the Department shall serve a written Statement of Findings to the licensee or his designee.~~

~~— (a) All Statements for Class I and III violations shall be served within 24 hours.~~

~~— (b) All Statements for Class II violations shall be served within ten working days.~~

~~— (3) Violations shall be classified as Class I, Class II, and Class III violations.~~

~~— (a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which presents imminent danger to children in the facility, or which presents a clear hazard to the public health.~~

—(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which has a direct or immediate relationship to the health, safety, or security of children in a child care facility.

—(c) "Class III Violation" means establishing, conducting, managing, or operating a child care facility regulated under Title 26, Chapter 39 and this rule without a license or with an invalid license.

—(4) The Department may cite a facility with one or more violations.

—(5) The Statement of Findings shall include:

—(a) The statute or rule violated,

—(b) a description of the violation,

—(c) the facts which constitute the violation, and

—(d) the classification of the violation.

R430-3-4. Plan of Correction.

—(1) A child care facility shall, within 14 calendar days of the receipt of a Statement of Findings, submit a plan outlining the following:

—(a) How the required corrections shall be accomplished.

—(b) Who is the responsible person to monitor whether the correction is accomplished;

—(c) The date by which the facility shall make the correction.

—(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the plan of correction.

—(3) If the Department rejects the Plan of Correction, the Department shall notify the facility of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. The facility shall submit a revised plan of correction within 14 days of receipt of a request.

—(4) If a facility corrects a violation before the deadline for submission and approval of a Plan of Correction, the facility shall submit a report of correction.

—(5) If a facility seeks review of the statement of findings, it is not required to submit a plan of correction during the review period.

R430-3-5. Corrective Action Required for Class I Violations.

—(1) If the Department issues a Class I violation to a licensed or unlicensed child care facility, the facility shall abate or eliminate the situation, condition, or practice constituting the Class I violation within a fixed period of time for the correction that is specified in the Plan of Correction.

—(2) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.

R430-3-6. Corrective Action Required for Class II Violations.

—(1) A facility served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time approved by the Department, but not to exceed 60 days from the issue date.

—(2) The facility shall submit justification to the Department for corrections that take longer than 60 days, for consideration of approval by the Department.

—(3) The Department may issue a conditional license or impose sanctions to the license or close the facility if a facility is cited with a Class II violation and fails to take required corrective action.

R430-3-7. Failure to Correct Class III Violations.

—(1) If the Department serves a Statement of Findings for a Class III violation, the facility shall file a Request for Agency Action/License Application form within 14 days and pay the required licensing fee.

—(a) If the facility fails to submit the request as specified, the Department shall order closure of the facility.

—(b) If the Executive Director determines that the lives, health, or safety of the children cannot be adequately assured pending application and licensure or an adjudicative proceeding to determine whether a license is necessary, he may order immediate closure of the facility.

R430-3-8. Sanction Action on License.

—(1) The Department may initiate an action against a child care facility pursuant to Section 26-39-108. That action may include:

—(a) Denial or revocation of a license if the facility fails to comply with R430-6, R430-60, R430-90, or R430-100, exhibits evidence of aiding, abetting or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children under its care.

—(b) Restriction or prohibition on new admissions to a child care facility for:

—(i) violation of any provision under these rules; or

—(ii) permitting, aiding, or abetting the commission of any illegal act in the child care facility.

—(c) Distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensure rules or illegal conduct permitted by the facility and the agency action taken.

—(d) Placement of Department employees or agents as monitors in the facility until corrective action is completed.

—(e) Assessment of the cost incurred by the Department in placing the monitors.

—(f) Assessment of monetary penalties that must be paid by the facility.

R430-3-9. Immediate Closure of Facility.

—(1) The Department may order the immediate closure of any licensed or unlicensed child care facility if the health or safety of the children is in immediate jeopardy during the course of adjudicative proceedings.

—(2) If the Department orders immediate closure of a facility, it shall serve an order that the facility is ordered closed as of a given date.

—(3) The Department may maintain an action in the name of the state for injunction or other process against the child care facility which disobeys a closure order.

—(4) The Department may assist in relocating children to another licensed facility.

R430-3-10. Statutory Penalties.

—A violation of this rule is punishable by administrative civil monetary penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

R430-3-3. Definitions.

—(1) "Deficiency" means a violation of any rule provision.

—(2) "Department" means the Department of Health.

(3) "Facility" means the building and adjacent property, equipment, and supplies devoted to the child care operation.

(4) "High Risk for Harm" means there is the potential for serious injury to a child.

(5) "Inspection" means observation, measurement, review of documentation, and interview to determine compliance with rules.

(6) "Investigation" means an in-depth inspection of specific alleged rule violations.

(7) "Licensee" means the legally responsible person, people, program, or agency that hold a valid Department of Health issued child care license.

(8) "Statement of Findings" means a statement of one or more specific rule violations which, if not corrected, will prompt the Department to take disciplinary action.

(9) "Technical Assistance" means the noting of a rule violation and providing information on how to come into compliance.

R430-3-4. Compliance Assurance.

(1) The Department shall conduct an announced and unannounced inspection of each licensed facility to:

(a) determine compliance with rules;

(b) verify compliance with conditions placed on a license in a conditional status; and

(c) verify compliance with variance conditions.

(2) If allegations of rule violations are reported to the Department, the Department shall conduct a complaint investigation.

(a) The Department shall not investigate complaints from an anonymous source.

(b) The Department shall inform complainants that they are guilty of a class B misdemeanor if they are giving false information to the Department with the purpose of inducing a change in a licensing or certification status.

R430-3-5. Technical Assistance.

If the Department finds a deficiency that does not pose a high risk for harm:

(1) the Department shall offer technical assistance; and

(2) the licensee shall provide a date by which correction must be made.

(a) The correction date shall not exceed 30 days from the date of the inspection.

(b) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

R430-3-6. Statement of Findings.

(1) If a licensee does not correct a deficiency by the correction date provided in R430-3-5(2), the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) the date by which correction must be made.

(i) The correction date shall not exceed 30 days from the date of the subsequent inspection.

(ii) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

(2) If a licensee violates a rule for which the licensee previously received technical assistance, the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) the date by which the correction must be made.

(i) The correction date shall not exceed 30 days from the date of the inspection.

(ii) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

(3) If a licensee violates a rule that creates a high risk for harm, the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) the date by which the correction must be made which shall not exceed 30 days from the date of the inspection.

R430-3-7. Directed Plan of Correction.

The Department may issue a directed plan of correction that specifies how and when cited findings will be corrected if a licensee:

(1) fails to comply by the correction date specified in R430-3-6; or

(2) violates the same rule provision more than three times within any 12-month period.

R430-3-8. Conditional Status.

(1) The Department may place a license on a conditional status to assist the licensee to comply with rules if the licensee:

(a) fails to comply with rules by correction date specified in R430-3-6;

(b) violates the same rule provision more than three times within any 12-month period; or

(c) violates multiple rule provisions.

(2) The Department shall establish the length of the conditional status.

(3) The Department shall set the conditions that the licensee must satisfy to remove the conditional status.

(4) The Department shall return the license to a standard status when the licensee meets the conditions of the conditional status.

R430-3-9. Revocation.

(1) The Department may revoke a license if the licensee:

(a) fails to meet the conditions of a conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) refuses to submit or make available to the Department any written documentation required to do an inspection or investigation;

(e) refuses to allow authorized representatives of the Department access to a facility to ascertain compliance to rules;

(f) fails to provide, maintain, equip, and keep the facility in a safe and sanitary condition; or

(g) has committed acts that would exclude a person from being licensed or certified under R430-6.

(2) The Department may set the effective date of the revocation such that parents are given 14 days to find other care for children.

R430-3-10. Immediate Closure.

The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and which require immediate action to protect their health or safety.

R430-3-11. Death or Serious Injury of a Child in Care.

The Department may order a provider to restrict or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending the review of the Child Fatality Review Committee or receipt of a medical report determining the probable cause of death or injury.

R430-3-12. Operating without a License.

If a person is providing care in lieu of care ordinarily provided by parents for more than four unrelated children without the appropriate license or certificate, the Department may:

- (1) issue a cease and desist order; or
- (2) allow the person to continue operation if:
 - (a) the person was unaware of the need for a license or certificate;
 - (b) conditions do not create a clear and present danger to children in care; and
 - (c) the person agrees to apply for the appropriate license or certificate within 30 days of notification by the Department.

R430-3-13. Deemed Status.

The Department may grant deemed status to facilities accredited by the National Academy of Early Childhood Programs or National Accreditation Commission for Early Care and Education Programs, National Association for Family Child Care or National Early Childhood Program Accreditation in lieu of the licensing inspection by the Department upon completion of the following:

- (1) As part of the license renewal process, the licensee must indicate on the license application its desire to initiate or continue deemed status.
- (2) This request constitutes written authorization for the Department to attend the provider's exit conference with the accrediting body.
- (3) Upon receipt from the accrediting agency, the licensee shall submit copies of the following:
 - (a) accreditation certificate;
 - (b) survey reports and recommendations; and
 - (c) progress reports of all corrective actions underway or completed in response to the accrediting body's action or Department recommendations.
- (4) The Department may exercise its regulatory responsibility and authority regardless of the facility's deemed status.

R430-3-14. Variances.

(1) If a licensee or applicant cannot comply with a rule but can meet the intent of the rule in another way, he may apply for a variance to that rule. The Department cannot issue a variance to the background screening requirements of Section 26-39-107 and R430-6.

(2) A licensee or applicant requesting a variance shall submit a completed variance request form to the Department. The requests must include:

- (a) the name and address of the facility;
 - (b) the rule from which the variance is being sought;
 - (c) the time period for which the variance is being sought;
 - (d) a detailed explanation of why the rule cannot be met;
 - (e) the alternative means for meeting the intent of the rule;
 - (f) how the health and safety of the children will be ensured;
- and

(g) other justification that the licensee or applicant desires to submit.

(3) The Department may require additional information before acting on the request.

(4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.

(5) If the Department approves the request, the licensee shall keep a copy of the approved variance on file in the facility and make it publicly available.

(6) The Department may grant variances for up to 12 months.

(7) The Department may impose health and safety conditions upon granting a variance.

(8) The Department may revoke a variance if:

- (a) the provider is not meeting the intent of the varied rule by alternative means;
- (b) the facility fails to comply with the conditions of the variance; or
- (c) a change in statute, rule, or case law affects the justification for the variance.

R430-3-15. Statutory Penalties.

(1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

(2) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for unlicensed or uncertified child care.

(3) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.

(4) Any person intentionally making false statements or reports to the Department may be fined \$100 for each violation to a maximum of \$10,000.

(5) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.

(6) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

(7) Within 10 working days after receipt of a negative licensing action or imposition of a fine, each child care program must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the negative licensing action.

KEY: child care facilities

[June 20, 2002]2005

Notice of Continuation December 19, 2002

26-39



**Health, Health Systems Improvement,
Child Care Licensing
R430-4
General Certificate Provisions**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 28248
FILED: 09/19/2005, 17:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There have been changes in the application process and in the inspection and enforcement practices as a result of concerns expressed by providers. The intent of the changes is to have a rule that reflects current practice and to have it easily understood by staff and providers.

SUMMARY OF THE RULE OR CHANGE: The rule reflects changes in the inspection and enforcement practices. Previously, there were various classes of violations. Consistent enforcement was difficult. The new language provides for high risk for harm violations and all others. The Department practice of providing technical assistance is explained. The Department's policy for granting variances is clarified, with a ban on variances for background screening requirements. Consequences for not allowing Department personnel to conduct inspections are set forth. Potential penalties for violations of the rule are set forth.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The Department has already implemented many of the practices set forth in this proposed rule. Costs to date for implementation have been met within existing budgets. No additional costs are anticipated.
- ❖ **LOCAL GOVERNMENTS:** Local governments that provide child care should not experience costs as a result of this rulemaking. Savings may be experienced as licensors provide technical assistance to achieve compliance in non-high risk areas. Only providers that are unable to achieve and maintain compliance will need to worry about the penalties set forth in the statute and this rule.
- ❖ **OTHER PERSONS:** Non-government providers of child care should not experience costs as a result of this rulemaking. Savings may be experienced as licensors provide technical assistance to achieve compliance in non-high risk areas. Only providers that are unable to achieve and maintain compliance will need to worry about the penalties set forth in the statute and this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule reflects current practice in child care regulation in most instances. Individual provider compliance costs are expected to be minimal or non-existent.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulation of child care has come under significant legal and legislative scrutiny in the past years. This rule reflects the best efforts of the State Health Department to assure that the inspection process is fair and reasonable, while still enforcing state law aggressively. I agree that the fiscal impact of this rule on business should be minimal. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
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:

Donna Thomas at the above address, by phone at 801-538-9294, by FAX at 801-538-6325, or by Internet E-mail at donnathomas@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-4. General Certificate Provisions.

R430-4-1. Legal Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It defines the standards that a person must follow to obtain a residential certificate for child care. This rule further delineates the role and responsibility of the Department in the enforcement of rules pertaining to a Residential Certificate provider and provides criteria for applying sanctions.

R430-4-2. Informal Discussions. [Purpose:]

[This rule defines the standards that a residential in-home child care provider must follow to obtain a certificate.] Independent of any administrative proceeding, an applicant or certificate holder may request at any time to discuss a Department decision with Department staff.

R430-4-3. Definitions.

- (1) "Certificate Holder" means the legally responsible person that holds a valid Residential Certificate issued by the Department of Health.
- (2) "Deficiency" means a violation of any rule provision.
- (3) "Department" means the Department of Health.
- (4) "Facility" means the building and adjacent property, equipment, and supplies devoted to the child care operation.

(5) "High Risk for Harm" means there is the potential for serious injury to a child.

(6) "Inspection" means observation, measurement, review of documentation, and interview to determine compliance with rules.

(7) "Investigation" means an in-depth inspection of specific alleged rule violations.

(8) "Statement of Findings" means a statement of one or more specific rule violations which, if not corrected, will prompt the Department to take disciplinary action.

(9) "Technical Assistance" means the noting of a rule violation and providing information on how to come into compliance.

R430-4-~~3~~4. Initial Application.

(1) An applicant for a certificate shall submit to the Utah Department of Health~~[file]~~ a ~~[Request for Agency Action]~~ completed residential ~~[C]~~certificate ~~[A]~~application ~~[with the Utah Department of Health]~~ on a form furnished by the Department.

(2) Each applicant shall comply with all regulations, ordinances, and codes, zoning, fire, sanitation, building and licensing laws, [regulations and ordinances, and codes] of the city, county, municipality in which the home is located.

(3) The applicant shall submit the following documentation as part of the application~~[The applicant shall obtain the following documents to submit with the application]:~~

(a) ~~[F]~~five hours of ~~[d]~~Department-approved training in child care;

(b) current CPR and First Aid certificates from a Department-approved source; and

(c) ~~[B]~~background clearance documents as required in R430-6.

(4) The applicant shall submit with the application packet a non-refundable fee as established in accordance with 26-39-104(1)(c).

~~[R430-4-4. Certificate Fee.~~

~~The residential provider shall submit a certificate fee established in accordance with 26-1-6 and 26-39-105.5(1)(b)(i)(B) with the completed application form.~~

~~[R430-4-5. Initial Certificate Issuance or Denial.~~

(1) The Department shall render a decision on an initial residential certificate application within 60 days of receipt of a completed application~~[packet or the Department shall deny an application not completed within six months of the submission date of the first component of an application packet].~~

(2) The applicant must reapply for a residential certificate if the applicant does not complete the application including all necessary submissions within six months of first submitting any portion of an application.

~~[2]~~(3) Upon verification of compliance with rules, [certificate requirements] the Department shall issue a ~~[Notice of Agency Action]~~ Letter of Certificate~~residential certificate~~ for a period not to exceed one year.

~~[3]~~(4) The Department shall issue a written decision denying a residential certificate application if the applicant and the facility are not in compliance with rules.~~[If the Department denies a Request for Agency Action - Certificate Application, the Department shall issue a written Notice of Agency Decision. An applicant who was denied a certificate may reapply for a certificate as a new applicant and must initiate a new request for agency action.]~~

(5) Pursuant to R501-12-4(8)(h), a provider may not have a residential certificate to do child care and a license to do foster care at the same time.

~~[R430-4-6. Letter of Certificate Provisions.~~

~~The Letter of Certificate is not assignable or transferable and the residential provider shall make the letter available to the public upon request.~~

~~[R430-4-~~7~~6. Expiration and Renewal of Certificate.~~

(1) Each residential certificate~~[Letter of Certificate shall]~~ expire~~[s]~~ at midnight~~[,]~~ on the day designated on the certificate~~[last day of the month, 12 months from the anniversary date of the prior Letter of Certificate]~~, unless previously revoked by the Department.

(2) The certificate holder~~[Residential child care provider]~~ shall ~~[file]~~ submit a completed~~[Request for Agency Action]~~ residential~~[,]~~ ~~[C]~~certificate ~~[A]~~application ~~[form,]~~ and applicable fees~~[, and clearances]~~ to the Department 30 days prior to the current certificate expiration.

~~[3] The Department shall renew the Letter of Certificate upon verification that the provider is in compliance with all applicable rules.~~(3) The Department may extend the residential certificate for an additional 30 days if the residential certificate holder fails to complete the renewal.

(4) The Department shall not renew a residential certificate~~[Letter of Certificate]~~ for a ~~[residential child care]~~facility ~~[where]~~that is no longer providing child care.

~~[R430-4-7. Change in Residential Certificate.~~

The certificate holder shall submit a completed residential certificate application to amend or modify an existing certificate at least 30 days before any of the following proposed or anticipated changes:

(1) increase or decrease of the certificate capacity;

(2) change in the name of the facility;

(3) change in the name of the certificate holder;

(4) change in the address; and

(5) change in area where child care is provided or a change in interior usable space.

~~[R430-4-8. Residential Certificate Transferability, Posting.~~

(1) The certificate is not transferable.

(2) The certificate holder shall post the certificate on the premises in a place that is readily visibly and accessible to the public.

~~[R430-4-~~8~~9. Notice of Intent to Inspect.~~

When the Department issues or renews a residential certificate, it will schedule a compliance inspection within 90 days.~~[When the Department issues the initial Letter of Certificate or the renewal Letter of Certificate the residential provider will be informed of the requirement for initial inspection and that the owner will receive a notice prior to the actual inspection.]~~

~~[R430-4-10. Compliance Assurance.~~

(1) The Department shall conduct an announced and unannounced inspection of each certified facility to:

(a) determine compliance with rules;

(b) verify compliance with conditions placed on a certificate in a conditional status; and

(c) verify compliance with variance conditions.

(2) If allegations of child abuse, child neglect or serious health hazards in or around the provider's home (see UCA 26-39-105.5(1)(d)) are reported to the Department, the Department shall conduct a complaint investigation.

(a) The Department shall not investigate complaints from an anonymous source.

(b) The Department shall inform complainants that they are guilty of a class B misdemeanor if they are giving false information to the Department with the purpose of inducing a change in a licensing or certification status.

R430-4-11. Technical Assistance.

If the Department finds a deficiency that does not pose a high risk for harm:

(1) the Department shall offer technical assistance; and

(2) the certificate holder shall provide a date by which correction must be made.

(a) The correction date shall not exceed 30 days from the date of the inspection.

(b) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.

R430-4-12. Statement of Findings.

(1) If a certificate holder does not correct a deficiency by the correction date provided in R430-4-11(2), the Department shall issue a statement of findings that includes:

(a) a citation to violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) a date by which the correction must be made.

(i) The correction date shall not exceed 30 days from the date of the inspection.

(ii) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.

(2) If a certificate holder violates a rule for which the certificate holder previously received technical assistance, the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) a date by which the correction must be made.

(i) The correction date shall not exceed 30 days from the date of the inspection.

(ii) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.

(3) If a certificate holder violates a rule that creates a high risk for harm, the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) a date by which the correction must be made which shall not exceed 30 days from the date of the inspection.

(5) If the provider elects not to correct any deficiency, letters outlining the deficiency are sent to the parents or guardians of all enrolled children and to all outside supporting agencies.

(6) If the Department discovers deficiencies as the result of a complaint investigation, the provider cannot elect not to correct.

R430-4-13. Directed Plan of Correction.

The Department may issue a directed plan of correction that specifies how and when cited findings will be corrected if a certificate holder:

(1) fails to be in compliance after a correction date specified in R430-4-12; or

(2) violates the same rule provision more than three times within any 12-month period.

R430-4-14. Conditional Status.

(1) The Department may place a certificate on a conditional status to assist the certificate holder to comply with rules if the certificate holder:

(a) fails to comply with rules by a correction date specific in R430-4-12;

(b) violates the same rule provision more than three times within any 12-month period; or

(c) violates multiple rule provisions.

(2) The Department shall establish the length of the conditional status.

(3) The Department shall set the conditions that the certificate holder must satisfy to remove the conditional status.

(4) The Department shall return the certificate to a standard status when the certificate holder meets the conditions of the conditional status.

R430-4-15. Revocation.

(1) The Department may revoke a certificate if the certificate holder:

(a) fails to meet the conditions of a conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) refuses to submit or make available to the Department any written documentation required to do an inspection or investigation;

(e) refuses to allow authorized representatives of the Department access to a facility to ascertain compliance to rules;

(f) fails to provide, maintain, equip, and keep the facility in a safe and sanitary condition; or

(g) has committed acts that would exclude a person from being licensed or certified under R430-6.

(2) The Department may set the effective date of the revocation such that parents are given 14 days to find other care for children.

R430-4-16. Immediate Closure.

The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and which require immediate action to protect their health or safety.

R430-4-17. Death or Serious Injury of a Child in Care.

The Department may order a provider to restrict or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending the review of the Child Fatality Review Committee or receipt of a medical report determining the probable cause of death or injury.

R430-4-18. Operating without a Residential Certificate.

If a person is providing care in lieu of care ordinarily provided by parents for more than four unrelated children without the appropriate license or certificate, the Department may:

- (1) issue a cease and desist order; or
- (2) allow the person to continue operation if:
 - (a) the person was unaware of the need for a license or certificate;
 - (b) conditions do not create a clear and present danger to children in care; and
 - (c) the person agrees to apply for the appropriate license or certificate within 30 days of notification by the Department.

R430-4-19. Variances.

(1) If a certificate holder or applicant cannot comply with a rule but can meet the intent of the rule in another way, he may apply for a variance to that rule. The Department cannot issue a variance to the background screening requirements of Section 26-39-107 and R430-6.

(2) A certificate holder or applicant requesting a variance shall submit a completed variance request form to the Department. The requests must include:

- (a) the name and address of the facility;
 - (b) the rule from which the variance is being sought;
 - (c) the time period for which the variance is being sought;
 - (d) a detailed explanation of why the rule cannot be met;
 - (e) the alternative means for meeting the intent of the rule;
 - (f) how the health and safety of the children will be ensured;
- and
- (g) other justification that the certificate holder or applicant desires to submit.

(3) The Department may require additional information before acting on the request.

(4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.

(5) If the Department approves the request, the certificate holder shall keep a copy of the approved variance on file in the facility and make it publicly available.

(6) The Department may grant variances for up to 12 months.

(7) The Department may impose health and safety conditions upon granting a variance.

(8) The Department may revoke a variance if:

- (a) the provider is not meeting the intent of the varied rule by alternative means;

(b) the facility fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the justification for the variance.

R430-4-20. Statutory Penalties.

(1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

(2) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for unlicensed or uncertified child care.

(3) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.

(4) Any person intentionally making false statements or reports to the Department may be fined \$100 for each violation to a maximum of \$10,000.

(5) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.

(6) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

(7) Within 10 working days after receipt of a negative licensing action or imposition of a fine, each child care program must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the negative licensing action.

~~R430-4-9. Inspections and Enforcement.~~

~~(1) Each residential certificate child care provider shall receive at least one annual on-site inspection.~~

~~(2) If a serious sanitation, fire or health hazards has been found during an inspection, the Department may, at the option of the residential certificate provider:~~

~~(a) Require a corrective action plan for the serious hazards found and make an unannounced follow up inspection to determine compliance; or~~

~~(b) Inform the parent's of each child in the care of the provider of the results of the Department's inspection and the failure of the provider to take corrective action.~~

R430-4-10. Sanction Action on Certificate.

The Department may revoke a certificate if the provider exhibits evidence of aiding, abetting, or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children in care.

]KEY: child care facilities

[~~August 20, 1998~~2005

**Notice of Continuation July 7, 2003
26-39**



Health, Health Systems Improvement,
Child Care Licensing
R430-6
Background Screening

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE No.: 28249

FILED: 09/19/2005, 17:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Department practice on disqualifying individuals from providing child care

has not always followed state law and rule. This rule change is intended to tighten this practice and in league with administrative oversight changes, assure that state law is fairly and consistently enforced in this area.

SUMMARY OF THE RULE OR CHANGE: Changes in the definition of "unsupervised contact" and "volunteers" are changed to more carefully conform to statute. Discretion of the Department to allow a person to provide care if it is reasonably convinced that the covered individual no longer resides in the home or will not have unsupervised contact with any child in care at the home, is removed. Circumstances where an exception can be granted are tightened and limited to action by the Executive Director. Penalties for violation of the rule are detailed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Tightening the circumstances where a person with a criminal background is permitted to provide child care should reduce administrative expenses unless providers challenge these findings in administrative or court proceedings. No other costs are anticipated.

❖ **LOCAL GOVERNMENTS:** Protecting children from being exposed to persons who may abuse their trust is central to the mission of the Department of Health's regulation of child care. This is an area where parents, due to confidentiality laws, do not have the ability to check on the criminal backgrounds of the caregivers to whom they entrust their children. If the pool of available child care workers is lowered by more stringent enforcement of state law in this area, this is a necessary cost to child care providers. The impact on the work force pool of this rule change is expected to be minimal and the costs negligible.

❖ **OTHER PERSONS:** Protecting children from being exposed to persons who may abuse their trust is central to the mission of the Department of Health's regulation of child care. This is an area where parents, due to confidentiality laws, do not have the ability to check on the criminal backgrounds of the caregivers to whom they entrust their children. If the pool of available child care workers is lowered by more stringent enforcement of state law in this area, this is a necessary cost to child care providers. The impact on the work force pool of this rule change is expected to be minimal and the costs negligible.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The burden on providers to submit information for screening of criminal backgrounds is not changed by this rule. Compliance costs are not changed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I agree with the fiscal assessment set forth above and believe that any costs incurred as a result of these rule changes are necessary to fulfill the statutory duty imposed on the Department to regulate child care. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
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:

Donna Thomas at the above address, by phone at 801-538-9294, by FAX at 801-538-6325, or by Internet E-mail at donnathomas@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: David N. Sundwall, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-6. Background Screening.

R430-6-1. Authority.

(1) The Utah Code, Section 26-39-107, requires that a Bureau of Criminal Identification [~~screening referred to as BCI~~](BCI) screening be conducted on each person requesting a license[~~to be licensed~~] or residential certificate or to renew a license or certificate for existing, new, and proposed owners, directors, members of the governing body, employees, providers of care and volunteers, except parents of children enrolled in the child care program.

(2) [~~The~~]Utah Code, Section 26-39-104, requires the Department to make and enforce rules to protect children's common needs for a safe and healthy environment and provide for competent care givers. The Department shall review the licensing information system for licensing and certification purposes pursuant to Section 62A-4a-116.2 to screen for individuals who may have a supported finding of severe abuse and neglect by the Department of Human Services or substantiated finding by a Juvenile court under Subsection 78-3a-320.

R430-6-2. Purpose.

The purpose of the screening process using the BCI criminal background and child and adult licensing information system is to protect children receiving services in a child[~~day~~] care program. The [~~C~~]riminal [~~B~~]background [~~S~~]screening [~~(CBS)~~] process determines whether a covered individual has been convicted of any crime. In addition, the Department screens all individuals using the licensing information system and court records under Subsection 78-3a-320(4) which is limited to:

- (1) [~~S~~]supported findings of severe abuse or neglect;
- (2) [~~A~~]an adjudication of severe child abuse or neglect by a court of competent jurisdiction; and
- (3) [~~A~~]any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person.

R430-6-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Convicted" includes a conviction by a jury or court, a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, a plea in abeyance, and a plea of guilty or nolo contendere.

~~(4)(2)~~ "Covered Individual" means ~~any person that has unsupervised contact with children listed in Utah Code Ann. Subsection 26-39-107(a):~~

- (a) owners;
- (b) directors;
- (c) members of the governing body;
- (d) employees;
- (e) providers of care, including children residing in a home where child care is provided;
- (f) volunteers, ~~including~~ excluding parents of children enrolled in the program ~~that have unsupervised contact with children in the child care facility~~; and
- (g) all adults residing in a residence where child care is provided.

~~(2)(3)~~ "Department" means the Utah Department of Health.

~~(3)(4)~~ "Direct supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

~~(4)(5)~~ "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

- (a) if committed by a person 18 years of age or older;
 - (i) severe or chronic physical abuse;
 - (ii) sexual abuse;
 - (iii) sexual exploitation;
 - (iv) abandonment;
 - (v) medical neglect resulting in death, disability, or serious illness;
 - (vi) chronic or severe neglect; or
 - (vii) chronic or severe emotional abuse
- (b) ~~H~~if committed by a person under the age of 18:
 - (i) serious physical injury, as defined in Subsection 76-5-109(1)(d) to another child which indicates a significant risk to other children, or
 - (ii) sexual behavior with or upon another child which indicates a significant risk to other children.

~~(5)(6)~~ "Unsupervised Contact" means contact with children that provides the unsupervised person opportunity and probability for personal communication or touch when not under the direct supervision of a child care provider or employee.

~~(6)(7)~~ "Volunteer" means an individual who is not directly compensated for providing care ~~including parents of children enrolled in the program,~~ whose duties assigned by a child care provider or employee include unsupervised contact in a child care facility with children or food consumed by children on a regularly scheduled basis of one or more times per month.

R430-6-4. Exclusions from Criminal Background Screening, Emergency Care Providers.

~~(1) Any person, including those that would otherwise be covered individuals, involved with a child care facility that the Department is reasonably satisfied will not have unsupervised~~

~~contact with children is not required to submit information for a criminal background screening.~~

~~(2)~~ In an emergency, not anticipated in the provider's emergency plan, a provider may assign a person who has not had a criminal background screening to care for and have unsupervised contact with children.

~~(a)(1)~~ That person shall make a signed, written declaration to the provider that the person has not been convicted of a felony or misdemeanor and has not been investigated with a supported finding from the Department of Human Services.

~~(b)(2)~~ During the term of the emergency, that person may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

~~(c)(3)~~ The provider shall make reasonable efforts to minimize the time that this person has unsupervised contact with children.

R430-6-5. Criminal Background Screening through the Utah Division of Criminal Investigation and National Criminal History Records.

(1) Each child care provider requesting a residential certificate ~~to be licensed~~ or license or to renew a license or residential certificate to provide child care shall submit to the Department the name and other identifying information on all covered individuals involved with the child care facility at the time the application is filed. A fingerprint card, waiver and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under (4) below.

(2) The request for a certificate or a license submitted by the provider shall require the provider to state in writing, based upon the provider's best information and belief, that no ~~person who will have unsupervised contact with a child receiving care,~~ covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a consent to a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, the Department shall obtain information from the provider to assess the threat to children consistent with R430-6-~~5~~6.

(3) After a license or certificate is issued or renewed, within five ~~(5)~~ days of a new covered individual becoming involved with a child care facility, the child care facility ~~or~~ licensee or certificate holder must submit the identifying information. A fingerprint card, waiver and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under (4) below.

(4) Fingerprint cards are not required if the Department is reasonably satisfied that:

- (a) the covered individual has resided in Utah for the last five years;
- (b) the covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time; or
- (c) as of May 3, 1999, the covered individual was involved with a child care facility in a covered individual capacity and has resided in Utah continuously since that time.

(5) If a covered individual has resided in Utah for the last five years, except for religious or military service out-of-state, the covered individual shall submit to the Department a letter from their clergy or commanding officer documenting that the covered individual was not convicted of any felony or misdemeanor during

the time period of the religious or military service. The covered individual shall then be deemed to have resided in Utah for the last five years and not be required to submit fingerprint cards.

(6) The Department shall perform a criminal background screening, which includes a review of the BCI database ~~[of the Utah Division of Criminal Investigation and Technical Services within] maintained by the Department of Public Safety [(BCI)] pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee were submitted; the Department shall forward the fingerprint card, waiver and fee to the Utah [Division of Criminal Investigation and Technical Services] Department of Public Safety for submission to the FBI for a national criminal history record check.~~

(7) If the BCI portion of the criminal background screening indicates that the covered individual has a conviction for a felony or misdemeanor, regardless of any exception under (4) above, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department.

(8) The Department shall review any criminal convictions, consistent with R430-6-~~[5]6~~, to determine if action should be taken to protect the health and safety of children receiving child care in the facility.

(9) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a written decision ~~[Notice of Agency Action]~~ to the child care provider and the covered individual explaining the action and the right of appeal.

R430-6-6. Exclusion from Child Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-39-107(2), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate and refuse to permit child care in the home ~~until the Department is reasonably convinced that the covered individual no longer resides in the home or will not have unsupervised contact with any child in care at the home].~~

(2) As allowed by Utah Code Ann. Subsection 26-39-107(3)(a), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314,

Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) Only ~~[F]~~ the Executive Director may ~~[exclude]~~ consider and approve individual cases where a covered individual with a misdemeanor conviction will be allowed to provide child care, that would otherwise be excluded by this rule, [on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child.] This authority may not be delegated. The following factors will be used ~~[in deciding under what circumstance, if any, the covered individual will be allowed to provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department]:~~

(a) ~~[F]~~ types and number of offenses;

(b) ~~[P]~~ passage of time since the offense was committed; offenses more than five years old will not bar approval of a license, certificate or employment;

(c) ~~[E]~~ circumstances surrounding the commission of the offense;

(d) ~~[I]~~ intervening circumstances since the commission of the offense; ~~[and]~~

(e) ~~[R]~~ relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children~~[-];~~

(f) a review of the narrative describing the circumstances of the arrest or conviction and the degree of involvement;

(g) evidence of rehabilitation, counseling, or completion of treatment programs; and

(h) consideration of whether the offense involved any form of violence against any person or inappropriate sexual conduct with any person.

(4) The covered individual shall supply at a minimum the following in support of the request for action by the Executive Director.

(a) three sworn and notarized witness letters of personal reference attesting to the rehabilitation; and

(b) a copy of the police report and the court report.

~~[(4)]~~(5) The Department shall rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny a license, certificate and employment based on that evidence.

~~[(5)]~~(6) If the covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

~~[(6)]~~(7) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours.

R430-6-7. Licensing Information System.

(1) Pursuant to Utah Code Subsection 26-39-104(1)(a)(ii) the Department shall screen all covered individuals, including children residing in a home where child care is provided, for a history of supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the Department shall assess the threat to the safety and

health of children. The Department may revoke any existing license or certificate and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home ~~or will not have unsupervised contact with any child in care at the home~~.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached, and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.

(b) The Department may hold the license, certificate or employment denial in abeyance until DHS or the Juvenile court renders a decision, ~~if a~~ while the covered individual appeals the supported finding.

(3) If the Department denies or revokes a license, certificate or employment based upon the licensing information system, the Department shall send a written decision ~~Notice of Agency Action~~ to the licensee and the covered individual.

(4) If the covered individual disagrees with the supported finding of severe abuse or neglect, any appeal must be directed to and follow the process established by Subsection 62A-4a-116.1. If the covered individual consents to the supported finding of severe abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the action taken by the Department, the covered individual may request a hearing with the Department.

(5) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department issues a license, certificate or grants employment; the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license or certificate.

R430-6-8. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-~~5~~6(2), the Department shall act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend any license or certificate of a provider if necessary to protect the health and safety of children in care.

~~(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the Department is satisfied that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.~~

~~(3)~~ If the Department denies or revokes a license, certificate or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a written decision ~~Notice of Agency Action~~ to the licensee and the covered individual notifying them that a hearing with the Department may be requested.

~~(4)~~ The Department may hold the license, certificate or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R430-6-9. Penalties.

~~The department may impose civil monetary penalties in~~

~~accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:~~

~~(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil penalty of \$50 to \$1,000 per day; and~~

~~(2) if significant problems exist that result in actual harm to a child, the department may impose a civil penalty of \$1,050 to \$5,000 per day.~~ **Statutory Penalties.**

(1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

(2) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.

(3) Any person intentionally making false statements or reports to the Department may be fined \$100 for each violation to a maximum of \$10,000.

(4) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.

(5) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

KEY: child care facilities

~~March 13, 2003~~ **2005**

**Notice of Continuation January 10, 2003
26-39**

Human Services, Administration, Administrative Services, Licensing **R501-14** Criminal Background Screening

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 28268

FILED: 09/30/2005, 11:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to accommodate the combining of this rule (Criminal Background Screening) and Rule R501-18 (Abuse Background Screening) as a result of changes in Sections 62A-2-101, 62A-2-120, 62A-2-121, and 62A-2-122 passed by the 2005 State Legislature.

SUMMARY OF THE RULE OR CHANGE: As a result of the passage of H.B. 64, H.B. 79, and S.B. 107 in the 2005 legislature, Rule R501-14 is being repealed in its entirety and a new Rule R501-14 will be created with this rule and the current Rule R501-18 which is also being repealed. (DAR NOTES: The

proposed repeal of Rule R501-18 is under DAR No. 28270 in this issue. The proposed new Rule R501-14 is under DAR No. 28191 in the September 15, 2005, issue of the Bulletin. H.B. 64 (2005) is found at UT L 2005 Ch 107, and was effective 05/02/2005. H.B. 79 (2005) is found at UT L 2005 Ch 60, and was effective 05/02/2005. S.B. 107 (2005) is found at UT L 2005 Ch 188, and was effective 05/02/2005.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-2-101, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-101, and 62A-5-101

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Anticipated costs to the state will be minimal if any at all. Potential costs are being absorbed in existing budgets.

❖ LOCAL GOVERNMENTS: No impact is anticipated. This rule does not affect the cost of operation or enforcement by local government.

❖ OTHER PERSONS: There may be some costs passed on to the applicant for a background screening. Those requiring a nationwide background check are subject to a \$24 fee assessed by the Federal Bureau of Investigation (FBI).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will not change the compliance costs for affected persons. Currently, the costs for required background screens are borne by the screening applicant if required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule creates no additional fiscal impact on business. There is, and has been, a minimal fiscal impact on those businesses (licensee programs/facilities) that choose to financially assist their staff with the cost of nationwide background screens. The repeal of this rule will not change that impact, nor does it impact any other businesses besides the licensee programs and facilities. Lisa-Michele Church, Executive Director

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.

~~**[R501-14. Criminal Background Screening.**~~
~~**R501-14-1. Criminal Background Screening.**~~

~~**A. Authority**~~

~~1. Pursuant to UCA 62A-2-120 and UCA 62A-4a-413, a Bureau of Criminal Identification, screening shall be conducted on licensees and persons associated with a licensee of a public or private agency or individual licensed by the Department of Human Services, referred to as DHS, to provide services for children.~~

~~2. Pursuant to UCA 78-30-3.5(2)(a), a criminal background screening shall be conducted as part of the Preplacement Adoptive Study.~~

~~3. The National Child Protection Act, Public Law 103-209, authorizes a state to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.~~

~~**B. Purpose**~~

~~The purpose of the criminal background screening, referred to as CBS, as a part of the licensing process for DHS, is to protect children in licensed programs from individuals who have been convicted of serious crimes, or individuals whose conduct or pattern of conduct is contrary to the safety and well-being of children.~~

~~**R501-14-2. Definitions.**~~

~~A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.~~

~~B. "Adult" means a person 18 years of age, or older.~~

~~C. "Authorized Worker" means the director or designee of a facility or an employee of DHS regional offices.~~

~~D. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to OL and CBS information as determined by the Director, Office of Licensing, DHS.~~

~~E. "Bureau of Criminal Identification" means the designated state agency including "terminal agency users" of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, referred to as DPS, responsible to maintain criminal records in the State of Utah, herein referred to as BCI.~~

~~F. "Consumer" means an individual, i.e., client, resident, customer, etc., who receives services from a licensee.~~

~~licensee or.~~

~~G. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.~~

~~H. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.~~

~~I. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.~~

~~J. "Department of Human Services/Criminal Background Screening Committee" means the committee designated by the Director of DHS to review criminal background information, herein referred to as DHS/CBS Committee.~~

—K. "The Division of Child and Family Services" means the DHS Division which operates regional human service offices, herein referred to as DCFS.

—L. "The Utah Department of Public Safety" means the Department with the policy making functions and regulatory and enforcement powers pertaining to public safety, herein referred to as DPS.

—M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

—N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.

—O. "Frequent visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

—P. "GRAMA" means the Government Records Access and Management Act that covers information access and privacy of provider files. Refer to UCA 63-2-101(2), Section 45, CFR 5, 1990, Part 2, Section 7 of the Social Security Act; and in the Federal Privacy Act of 1974.

—Q. "Human services licensee or licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

—R. "Identifying information" means individual data including, but not limited to; name, all aliases, date of birth, social security number, and driver license, or state identification card.

—S. "Members of Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

—T. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

—U. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

—V. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or legal right to the possession and to direct the affairs of the program.

—W. "Person associated with the licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of human service licensee. Also, any person 18 years of age or older who resides in a home or is a frequent visitor where home-based care is provided.

—X. "Provider of care" means a person who provides direct services for licensee consumers.

—Y. "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

—Z. "Utah Computerized Criminal History Data Base" means the internal, computerized data bases maintained by BCI/DPS, herein referred to as UCCH Database.

—AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

—BB. "Volunteer" means a person other than a parent or guardian of a child or an adult receiving care in the facility, who performs services for a licensee in a non-paid capacity.

R501-14-3. Procedure for Criminal Background Screening.

—A. All proposed licensees and persons associated with the licensee who are licensed to provide services for children, shall submit a Consent and Release of Liability and Request for Background Screening form to the DHS OL for criminal background screening. Each licensee and person associated with the licensee will attach a copy of one photo identification issued by a governmental agency, either a driver license, or a state issued identification card, and their Social Security number. The Utah State governmental identification must show an address identical to the Consent and Release of Liability and Request for Background Screening form, to establish residency.

—B. Persons 18 years of age or older residing in the home or frequent visitors of home based care must also comply with this requirement.

—1. A licensee shall submit the identifying information to DHS for criminal background screening prior to hiring a new employee. The licensee assumes all liability if an individual is hired prior to receiving the criminal background screening approval. The licensee is also responsible for directly supervising individuals hired before receiving the required background screening approval. In the case of emergency hiring, a licensee shall immediately submit the identifying information to DHS for criminal background screening.

—2. An application for a new license will not be approved until the criminal background screenings have been completed. For renewal licenses in case of emergency or need for immediate placement of a child, a conditional license may be issued for a maximum of thirty days to allow for the criminal background screening to be completed.

—3. A licensee applying for license renewal will have thirty days prior to license expiration to submit the identifying information of all licensees and persons associated with the licensee to DHS for criminal background screening.

—4. A home based licensee applying for license renewal will have thirty days prior to license expiration to submit to DHS for criminal background screening the identifying information on all persons associated with the licensee.

—C. When the OL receives the identifying information from the applicant licensee, the OL will access the UCCH Database to conduct the criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.

—D. When a licensee or person associated with a licensee has not lived in Utah for the last five consecutive years, or has unexplained gaps in work or residence record, the request for a FBI national criminal history record check will be made by OL. The licensee or person associated with the licensee shall be responsible to provide the OL with completed fingerprint cards and a cashier's check or money order for the cost of the nationwide check within 10 days after receiving the request. Licensees or persons associated with the licensee may also be required to provide the OL with a criminal history from the states they have lived in, upon request by the OL. The person associated with the licensee is responsible for all costs associated with obtaining the criminal history. The criminal history shall be provided within 90 days of the date of the OL request. For persons associated with the licensee who are citizens of foreign countries and have not lived in Utah for the last five consecutive years, the OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service resident alien card to verify the screening was accomplished prior to entry into the United States. The OL may also accept a copy of a criminal history from the country of

citizenship to determine if the individual has been convicted of any crime. Either a copy of a resident alien card or criminal history from the foreign country must be submitted to the OL within 90 days after requested by the OL.

— E. If a licensee or person associated with the licensee does not provide the requested information and fees within the time frames specified, their application will be denied and they will not be eligible to provide services for the program or children.

— F. An applicant requesting initial licensure for a program serving children, who has lived or operated programs in Utah for less than five years, may be screened through the nationwide FBI process.

— G. Licensees or persons associated with the licensee who have complied with the above requirements, may continue to work under direct supervision pending the outcome of the criminal background screening.

— H. If a licensee or person associated with the licensee has an arrest record without a final disposition, including, but not limited to the following: warrant issued, plea held in abeyance, court date pending, diversion agreement, adjudication withheld, the background screening consent and release of liability will be returned to the licensee or authorized worker. The OL will not process criminal background screenings until there is a final disposition.

R501-14-4. Results of Screening:

— When the criminal background screening is completed, OL will take the following action:

— A. Approval:

— If a licensee or person associated with the licensee is found to have no criminal history record, or if the only offenses are misdemeanors or infractions not involving domestic violence, lewdness, battery, offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, and the conviction date is older than five years, a notice will be sent to the authorized DHS worker stating that the person is approved to provide services for the licensed program serving children.

— B. Denial:

— 1. A licensee or person associated with a licensee convicted of a felony shall not be given a background screening clearance required to provide services for the licensed program serving children.

— 2. A licensee or person associated with a licensee convicted of a misdemeanor or infraction involving an offense identified as domestic violence, lewdness, battery, or an offense identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, shall not be given a background screening clearance to provide, or volunteer, services for the licensed program serving children.

— 3. If a licensee or person associated with a licensee has been convicted within the last five years of a misdemeanor or infraction not listed in paragraph 2 above, a further study of the criminal and court records will be required. A comprehensive review of the individual circumstances shall be conducted by the DHS/CBS Committee.

— 4. If a licensee or person associated with a licensee has a criminal history record that indicates there are misdemeanor or infraction offenses, a misdemeanor or infraction conviction, conduct, or pattern of conduct, or failure to disclose a criminal conviction on the Consent and Release of Liability and Request for Background Screening form, it may result in a denial of a criminal background clearance. Further study of the criminal and court records by the DHS/CBS Committee will be conducted.

— 5. If a licensee or person associated with a licensee may have a criminal record, the OL may send a notice to the licensee or authorized worker requesting a fingerprint card and fee to be submitted to the OL within 72 hours after receiving the notice.

— a. The required fingerprint card must be obtained from OL because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which may cause a loss of license or employment.

— b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.

— c. The fingerprinted card and the fee, in the form of a money order or cashier's check made payable to Utah DPS BCI, shall be sent to DHS OL for processing. This shall be completed by the person associated with a licensee. Failure to submit the fingerprint card and fee will result in the background screening application being denied and the person associated with the licensee will not be eligible to provide services for children.

— d. The fingerprint card and fee will be submitted to the DPS BCI by the OL.

— e. DPS BCI will submit the results and cards to OL.

— f. The DHS/CBS committee will concurrently review the misdemeanor and infraction offenses within the last five years to determine whether or not the licensee or person associated with a licensee shall be approved or denied.

R501-14-5. DHS/CBS Committee Review:

— A. A DHS/CBS Committee composed of members designated by the Director of DHS representing the various Divisions of DHS shall conduct a comprehensive review of the criminal background screening results at least twice a month.

— B. The Committee shall, at a minimum, review the date and the type of offense or conviction, written documentation, the legal status of the individual, conduct or pattern of conduct, and if the criminal conviction was disclosed on the Consent and Release of Liability and Request for Background Screening form.

— C. The committee shall maintain a record of the review to include the findings of fact, conclusions of each case, and a copy of the UCCH record and fingerprint card, when appropriate.

R501-14-6. Results of the DHS/CBS Committee Review:

— A. Approval: If based upon DHS/CBS committee review, a decision is reached to approve a licensee or person associated with a licensee, a criminal background screening clearance shall be issued.

— B. Denial:

— 1. If, based upon DHS/CBS Committee review of the circumstances, there exists credible evidence that the licensee or person associated with a licensee, poses a threat to the safety and health of the consumers being served by the human service program, a criminal background screening clearance shall not be issued.

— 2. If a decision is reached to deny, or revoke, proper legal notice of agency action will be sent to the licensee or applicant by the DHS or the OL.

— 3. The licensee or person associated with the licensee may request a hearing in accordance with the UAPA, UCA 63-46b.

R501-14-7. Conviction After Licensure:

— If a licensee or person associated with the licensee is convicted of a felony, misdemeanor, or infraction after a license is issued, the licensee has five working days to notify OL. Failure to notify will result in automatic, immediate suspension of the license. When notice

of a conviction is received, OL will respond as stated in UCA 501-14-3, et seq.

R501-14-8. Confidentiality.

— A. The results of the criminal background screening shall only be released to individuals approved by the Department of Human Services who have signed a Non Disclosure statement, which includes acknowledging the existence or non-existence of a criminal history by an Authorized DHS Worker. The information will be disclosed according to UCA 53-10-108.

— B. The results of the criminal background screening will not be given over the telephone. The information must be requested in writing with the proper releases.

— C. All documents relating to a criminal background screening must be maintained and stored as confidential material. When determined the document is no longer needed it must be destroyed, in a manner that secures its privacy, i.e., shredded, burned, etc.

R501-14-9. Retention of Identifying Information, Fingerprint Cards, and Criminal Background Screening.

— A. Identifying Information and criminal background screening results shall be retained by the licensee for the duration of the person's association with the licensee. Screening results cannot be shared, transferred, or further disseminated to any other licensee or individual.

— B. Identifying information, fingerprint cards, and criminal background screening results of persons whose background screening have been denied, and fingerprint cards for persons approved, shall be retained in the OL, pursuant to UCA 63-2-101, et seq.

R501-14-10. Expungement.

— A. Licensees and persons associated with a licensee whose background screening applications have been denied due to a criminal record, may request further information or expungement of the record through the DPS BCI pursuant to UCA 77-18-11.

— B. When a criminal record is expunged, the licensee or person associated with a licensee may re-apply for a background screening clearance.

— C. Information regarding procedures for criminal record expungement may be obtained from BCI. The costs of expungement are the responsibility of the licensee or person associated with the licensee.

R501-14-11. Administrative Hearing.

— A. A licensee or person associated with the licensee, who has been convicted of a felony, has no right to a UAPA hearing.

— B. A licensee or person associated with the licensee who has been denied a license or employment based upon a misdemeanor or infraction conviction may request a hearing in accordance with the UAPA. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued. The person associated with the licensee or a licensee has no right to a UAPA hearing, unless there is a disputed issue of fact with the DHS policy.

— C. When action to deny, revoke, or suspend a license is based upon a review by the DHS/CBS Committee and new evidence not considered by the committee is introduced at the hearing, the committee's representative may request that the case be remanded to the committee to consider the new evidence.

— 1. If the committee determines denial, revocation, or suspension is still warranted after further review, the committee chairperson will notify both the person associated with the licensee or the licensee and

the OAH. The ALJ may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

— 2. If, after reviewing the new evidence, the committee recommends licensure, the OL will then send an appropriate notice to the licensee with a copy to OAH. After receiving notice that the license in dispute has been granted, OAH will close it's files without issuing a decision.

KEY: licensing, human services

March 22, 1999

Notice of Continuation May 18, 2001

62A-2-120

62A-4a-413]



Human Services, Administration,
Administrative Services, Licensing
R501-18
Abuse Background Screening

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 28270

FILED: 09/30/2005, 12:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to accommodate the combining of this rule (Abuse Background Screening) and Rule R501-14 (Criminal Background Screening) as a result of changes in Sections 62A-2-101, 62A-2-120, 62A-2-121, and 62A-2-122 passed by the 2005 State Legislature.

SUMMARY OF THE RULE OR CHANGE: As a result of the passage of H.B. 64, H.B. 79, and S.B. 107 in the 2005 legislature, Rule R501-18 is being repealed in its entirety and a new Rule R501-14 will be created with this rule and the current Rule R501-14 which is also being repealed. (DAR NOTES: The proposed repeal of Rule R501-14 is under DAR No. 28268 in this issue. The proposed new Rule R501-14 is under DAR No. 28191 in the September 15, 2005, issue of the Bulletin. H.B. 64 (2005) is found at UT L 2005 Ch 107, and was effective 05/02/2005. H.B. 79 (2005) is found at UT L 2005 Ch 60, and was effective 05/02/2005. S.B. 107 (2005) is found at UT L 2005 Ch 188, and was effective 05/02/2005.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-2-101, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-101, and 62A-5-101

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Anticipated costs to the state will be minimal if any at all. Potential costs are being absorbed in existing budgets.

❖ LOCAL GOVERNMENTS: No impact is anticipated. This rule does not affect the cost of operation or enforcement by local government.

❖ OTHER PERSONS: There may be some costs passed on to the applicant for a background screen. Those requiring a nationwide background check are subject to a \$24 fee assessed by the Federal Bureau of Investigation (FBI).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will not change the compliance costs for affected persons. Currently, the costs for required background screens are borne by existing state budgets; and the cost of an FBI nationwide check is borne by the screening applicant if required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule creates no additional fiscal impact on business. There is, and has been, a minimal fiscal impact on those businesses (licensee programs/facilities) that choose to financially assist their staff with the cost of nationwide background screens. The repeal of this rule will not change that impact, nor does it impact any other business beside the licensee programs and facilities. Lisa-Michele Church, Executive Director

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.

~~R501-18. Abuse Background Screening.~~

~~R501-18-1. Management Information System.~~

~~A. Authority~~

~~1. Pursuant to UCA 62A-2-121 and UCA 62A-4a-116, a review of the Management Information System shall be conducted of all licensees and persons associated with the licensee as part of the initial and annual licensing process.~~

~~2. Pursuant to UCA 62A-3-311.1 a screening of licensees and persons associated with the licensee shall be conducted through the Adult Protective Services Data Base.~~

~~B. Purpose~~

~~The purpose of screening, as a part of the licensing process for the Department of Human Services, is to protect children and vulnerable~~

~~adults from individuals who may have committed acts of abuse, neglect, or exploitation of a child or vulnerable adult.~~

~~R501-18-2. Definitions.~~

~~A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.~~

~~B. "Adult" means a person 18 years of age, or older.~~

~~C. "Adult Protective Services Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of adults.~~

~~D. "Authorized Worker" means the director or designee of a facility or an employee of Department of Human Services.~~

~~E. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to the management information system as determined appropriate by the Director, Office of Licensing, Department of Human Services.~~

~~F. "Child Protective Service Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of children.~~

~~G. "Consumer" means an individual, i.e., client, resident, customer, etc. who receives services from a licensee.~~

~~H. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.~~

~~I. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.~~

~~J. "The Division of Aging and Adult Services" means the DHS Division responsible for administering and delivering services for aging and disabled adult residents of Utah, herein referred to as DAAS.~~

~~K. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.~~

~~L. "The Division of Child and Family Services" means the office of DHS, which operates regional human service offices, herein referred to as DCFS.~~

~~M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.~~

~~N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.~~

~~O. "Frequent Visitor" means an adult who visits on a recurring basis in a home where home based care is provided.~~

~~P. "GRAMA" means the provisions of the Government Records Access and Management Act that provides for and covers information access and privacy of provider files, as found in UCA 63-2-101, et seq.~~

~~Q. "Human services licensee" or "licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.~~

~~R. "Identifying information" means individual data including name, date of birth, social security number, and a copy of a driver license, or state identification card, and all aliases.~~

~~S. "Management information system" means the part of the DCFS management information system developed for licensing purposes in accordance with UCA 62A-4a-116 and the Adult~~

Protective Services Database identified in UCA 3-311.1 herein referred to as "management information system"

— T. "Member of a Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

— U. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or the legal right to the possession and to direct the affairs of the program.

— V. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

— W. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

— X. "Person Associated with the Licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of a human service licensee. Also, any person 18 years or older who resides in a home or frequent visitor to a home where home based care is provided.

— Y. "The Provider of Care" means a person who provides direct services for licensee consumers.

— Z. "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

— AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

— BB. "Volunteer" means a person other than a parent or guardian of a child or vulnerable adult receiving care in the facility, who performs services for a licensed facility in a non-paid capacity.

— CC. "Vulnerable Adult" means a disabled adult as defined in UCA 62A-3-301 (5); any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing or medical care, without which physical injury or illness may occur.

R501-18-3. Procedure for Abuse Background Screening.

— A. Prior to hiring an individual, human service programs required to be licensed by DHS shall submit identifying information, including the names, date of birth, social security number, and driver's license or state identification card of all licensees and all persons associated with the licensee. Requests for clearance shall also be resubmitted annually thereafter. The screening will search for a history of abuse, neglect or exploitation of children or vulnerable adults.

— B. Human service programs which are home based shall also submit identifying information including, the names, date of birth, social security number and a copy of the driver license or state identification card of all licensees and persons associated with the licensee for an initial and annual screening of the Management Information System to search for a history of abuse, neglect or exploitation of children or vulnerable adults.

— C. If a licensee hires an individual without having the abuse background screening approval, the licensee assumes all liability and is responsible for directly supervising all individuals who have not received the required abuse background screening approval.

R501-18-4. Results of Screening.

— A. Approval:

— If the name of the licensee or person associated with the licensee does not appear on the management information system, the abuse background screening shall be cleared to provide services in the licensed DHS facility, program, or home serving children or vulnerable adults. Approval is only applicable to this specific facility, program, or home.

— B. Comprehensive Review:

— If the licensee or person associated with the licensee is identified in the Management Information System as a perpetrator of abuse, neglect or exploitation of children or vulnerable adults, their abuse background screening shall require further review by the DHS in accordance with R501-18-5.

R501-18-5. DHS Comprehensive Review.

— A. A comprehensive review shall be conducted by the DHS.

— B. The review shall seek to obtain the following information, including input regarding mitigating circumstances:

- 1. What is the nature of the abuse or neglect?
- 2. How long ago did the incident occur?
- 3. What was the severity of the abuse or neglect?
- 4. Was legal action taken?
- 5. What steps have been taken to remedy the situation?
- 6. Based upon the information available, does this person pose a threat to the safety and well-being of consumers of the licensee?
- 7. The review may also seek additional information from the applicant and other individuals, including all enforcement personnel who completed the investigation and the investigative worker.

— C. The DHS shall maintain a record of the review to include the findings of fact and the conclusions of each case.

R501-18-6. Results of the DHS Review.

— A. Approval:

— 1. If the DHS review determines that the licensee or person associated with the licensee does not pose a threat to consumers, the abuse background screening shall be approved.

— B. Denial:

— 1. If, based upon DHS review of the circumstances, there exists credible evidence that the licensee, person associated with the licensee, or person living in the home or frequent visitor to the home poses a threat to the safety and health of the consumers being served by the human service licensee, an abuse background screening shall not be approved.

— 2. A Notice of Agency Action, herein referred to as NAA, will be sent to the licensee and the person associated with the licensee stating that the application for a abuse background screening approval has been denied.

— a. In the case of out of home care, if the provider or applicant is terminated or dismissed within 24 hours, a license may continue.

— b. If the licensee or person associated with the licensee is an adult residing in a home or a frequent visitor to a home where home based care is offered, the Office of Licensing shall not issue a license.

R501-18-7. Administrative Hearing.

— A licensee or person associated with the licensee who is denied approval may request a hearing within 10 days in accordance with UAPA. The licensee or person associated with the licensee have no right to a UAPA hearing unless there is a disputed issue of fact with the DHS policy.

— A. Status Pending the Hearing Results:

— 1. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued.

— 2. If the licensee or person associated with the licensee is unable to work under direct supervision, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the results of the hearing.

— 3. If a person 18 or older residing in a home or a frequent visitor to a home where home based care is provided requests a hearing, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the outcome of the hearing and the person 18 or older living in the home or frequent visitor must never be present when consumers being served by the licensee are in the home pending the hearing decision.

— 4. The NAA must be posted in a conspicuous place where parents, consumers, or the public will obviously see and be able to read the notice. Programs with multiple service locations will post applicable notices at each of those locations. The Office of Licensing may also notify parents or the public directly, or require the facility or program to do so.

— B. Participants of the DHS review shall be available to testify at the hearing.

— 1. When action to deny, revoke, or suspend a license or deny an abuse background screening is based upon the DHS review, and new evidence not considered by the DHS review is introduced at the hearing, the DHS review representative may request that the case be remanded to the DHS to consider the new evidence. If the DHS determines denial, revocation, or suspension is still warranted after further review, the DHS will notify both the licensee, person associated with the licensee, and the OAH. The OAH may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

— 2. If, after reviewing the new evidence, the DHS recommends that the abuse background screening be approved, the DHS shall advise the licensee and person associated with the licensee. The DHS will then send an appropriate notice to the licensee and person associated with the licensee and a copy to OAH.

R501-18-8. Referral After Licensure.

— If a licensee or person associated with a licensee providing services to the program serving children or vulnerable adults who must obtain the abuse background screening approval is substantiated for adult or child abuse, neglect, or exploitation after receiving the abuse background approval, the licensee has five working days to notify the OL. Failure to notify may result in automatic, immediate suspension of the license. When notice of a substantiated abuse record is received, the OL will respond as stated in R501-18-5 above.

R501-18-9. Confidentiality.

— The information contained on the Management Information System is confidential and shall only be released as authorized by UCA 62A-4a-412 for children or UCA 62A-3-311.1 for adults.

— A. The information in the Management Information System may only be released to individuals approved by the DHS in accordance with UCA 62A-4a-412 or UCA 62A-3-311.1.

— B. The information in the Management Information System will not be given over the telephone. The information must be requested in writing with the proper releases.

— C. All documents relating to an abuse background screening must be maintained and stored in accordance with GRAMA.

KEY: licensing, human services

June 16, 1998

Notice of Continuation January 27, 2005

62A-2-101 et seq.]

Human Services, Recovery Services **R527-201** Medical Support Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28244

FILED: 09/19/2005, 09:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to delete reference to a procedure which the child support program has not used since January 2001 due to national and state policy considerations. These considerations include the following: first, pregnancy and confinement costs are viewed under state law as attributable to the care of the mother rather than as child support. The federal/state child support program is authorized to establish orders only for child support obligations, but not for spousal support obligations. The program is authorized to collect a spousal support obligation, but only if it has been established previously along with a child support obligation in a court order that was obtained privately by the parents; second, federal and state policy considerations place priority on encouraging Medicaid-eligible pregnant mothers to obtain needed pre-natal care and pregnancy and confinement assistance for the health and welfare of both the mother and unborn child, and the prospect of creating a large debt for the fathers of such children immediately after birth tends to discourage mothers from obtaining the needed assistance; and third, federal and state policy considerations place a priority on encouraging both parents to voluntarily cooperate in establishing paternity and a prospective support order as early as possible after the birth of the child, and charging a large retroactive debt immediately after the birth tends to discourage such voluntary cooperation.

SUMMARY OF THE RULE OR CHANGE: The change to this rule deletes the establishment of pregnancy and confinement costs procedure which the Office of Recovery Services (ORS) has not used since January 2001.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78-45-7.15, 63-46b-1 et seq., 62A-11-326.1, 62A-11-326.2, 62A-11-326.3; and Subsections 62A-11-406(9) and 35A-7-105(2)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no change to state budgets because the procedure has not been in use since January 2001, after discussions with decision-makers in the Department of Human Services and the Department of Health. Currently, when paternity is established, ORS establishes a

prospective support order which includes both a financial support award and a provision requiring the parents to maintain health insurance coverage; however, a retroactive judgment for the cost of pregnancy and confinement is not established.

❖ LOCAL GOVERNMENTS: None--Administrative rules of ORS do not apply to local government.

❖ OTHER PERSONS: Under state law Mothers who have not received Medicaid may still pursue judgments for pregnancy and confinement costs through private legal counsel and the courts if they wish, but this service is not offered through the federal/state-funded child support program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be a cost to mothers that want to establish a judgment on their own for pregnancy and confinement costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses because this change has been in practice since January 2001. Lisa-Michele Church, Executive Director

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:

Kristen Lowe at the above address, by phone at 801-536-0347, by FAX at 801-536-8833, or by Internet E-mail at klowe@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Mark Brasher, Acting Director

R527. Human Services, Recovery Services.

R527-201. Medical Support Services.

~~R527-201-8. Establishing Costs for Pregnancy and Confinement.~~

~~1. When establishing a judgment for medical costs for pregnancy and confinement in IV-A and Non-IV-A Medicaid paternity and separation cases, ORS/CSS shall research the exact pregnancy and confinement costs which have accumulated to date.~~

~~2. When establishing a judgment for medical costs for pregnancy and confinement in Non-IV-A Non-Medicaid Cases, ORS/CSS shall consult with the mother to determine the amount of the uninsured pregnancy and confinement expenses.~~

~~3. When establishing any judgment for medical costs for pregnancy and confinement, one-half of the uninsured pregnancy and confinement costs shall be charged to the non-custodial parent.~~

]

R527-201-[9]8. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

- a. the obligated parent is still employed by the employer;
- b. the employer maintains or contributes to plans providing dependent or family health coverage;
- c. the obligated parent is eligible for the coverage available through the employer; and
- d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-[40]9. Obligated Parent Receiving Medicaid.

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

[November 30, 2004]2005

Notice of Continuation January 30, 2002

63-46b-1 et seq.

62A-11-326.1

62A-11-326.2

62A-11-326.3

62A-11-406(9)

78-45-7.15

35A-7-105(2)



Insurance, Administration

R590-98

Unfair Practice in Payment of Life Insurance and Annuity Policy Values

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28267

FILED: 09/30/2005, 10:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed to update code citations as per H.B. 374 passed in 2003, correct grammar, and reword for clarification purposes. (DAR NOTE: H.B. 374 (2003) is found at UT L 2003 Ch 298, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: The changes include: 1) change references to Chapter 23 to 23a; 2) replace "insured" with "policyholder;" 3) define policyholder; 4) clarify the requirement that insurers request approval from the department to defer payments of policy values; 5) clarify that surrendered policies remain in force to the paid-to-date; 6) require written consent of policyholder to substitute a loan for a loan instead of a surrender; and 7) added an Enforcement Date section (Section R590-98-9) to the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-23a-402 and 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to this rule will create no changes in the department's work load or revenues and therefore no change to the state budget. Changes deal mainly with numbering and clarification updates.

❖ LOCAL GOVERNMENTS: This rule only applies to the relationship between the insurer, insured, and the department.

It does not deal with the relationship of these parties to local government. Therefore, there are no costs or savings.

❖ OTHER PERSONS: The changes to this rule will not change the requirements or duties of insurance licensees to the department or their insureds. The changes simply update code reference numbers, not content, and clarify requirements of licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will not change the requirements or duties of insurance licensees to the department or their insureds. The changes simply update code reference numbers, not content, and clarify requirements of licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on the insurance industry in Utah. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-98. Unfair Practice in Payment of Life Insurance and Annuity Policy Values.****R590-98-1. Authority.**

This rule is adopted pursuant to Section 31A-2-201[~~Utah Code,~~] which empowers the [Insurance] commissioner to make rules necessary to implement [the Insurance Code] Title 31A, and pursuant to Section [31A-23-302]31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found [by him] to be unfair or deceptive.

R590-98-2. Scope.

This rule shall apply to all persons transacting insurance under [the Utah Insurance Code] Title 31A.

R590-98-3. Purpose.

The purpose of this rule is to require a prompt response to policyholder requests for policy values and limit the exercise of the statutory deferral option to situations in which the financial stability of the insurer is at risk.

R590-98-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions apply for the purpose of this rule:

A. ~~[As used in this rule]~~ "Policy Values" ~~[are]~~ means the values to which the ~~[insured]~~ policyholder is entitled upon ~~[application]~~ request for policy loans, ~~[withdrawals]~~, or the surrender of the policy and include cash values, accumulated dividends, coupons and other values of a similar nature.

B. ~~[As used in this rule]~~ "Deferral" means the withholding or delay in payment of ~~[cash]~~ policy values to the policyholder.

C. ~~[As used in this rule]~~ "Deferral" does not include the withholding or delay in payment to a policyholder of ~~[Variable Life Insurance (VLI)]~~ variable life insurance and variable annuity payments when the value of investment assets on which payments are based cannot be obtained because:

- (1) the Securities and Exchange ~~[commissioner]~~ Commission (SEC) has restricted trading;
- (2) the stock exchange is closed; or
- (3) the SEC permits deferral to protect the policyholder.

D. "Policyholder" shall include, in addition to the definition in 31A-1-301, a certificate holder under a group policy.

R590-98-5. Unfair or Deceptive Acts or Practices.

The following are hereby defined as unfair or deceptive acts or practices:

A. Failing to ~~[respond to]~~ comply with a policyholder request for ~~[cash]~~ policy values within 20 days of receipt of such request.

B. Exercising the nonforfeiture deferral option of Section 31A-22-408(2)(~~f~~), 31A-22-409(3)(~~d~~), or 31A-22-420(5), in response to ~~[an application]~~ a request for policy values unless the financial stability of the insurer is at risk.

R590-98-6. Requirements.

A. ~~[All companies licensed in this State must file with the commissioner a written notice of election to reserve]~~ Before an insurer exercises the right to defer the payment of any policy values, [after demand has been made by a policyholder for payment] the insurer must file a written request with the commissioner. The ~~[notice]~~ request must include an explanation of the reason~~(s)~~ for such action, the steps to be taken by the company to alleviate the situation, the manner in which the deferment is being imposed fairly and equitably on all policyholders, the notice to policyholders as to why the company is taking such action and the anticipated date on which the ~~[cash]~~ policy values are expected to be available.

B. If the policy does not specify policy values between policy anniversaries, such [Basic cash] policy values may be the values shown in the policy nonforfeiture value tables as of the end of the policy year or may be computed by the interpolation of values between policy years [or by the values shown in the policy nonforfeiture value tables as of the end of each policy year]. If the ~~[latter]~~ former method is used, the company may deduct from the ~~[cash]~~ policy value any premiums required to pay the policy to the next succeeding anniversary date. In no event, may premiums be deducted that will advance the paid-to date past the next succeeding

anniversary date. Regardless of the method used, the policy remains in force until the paid-to date.

C. No surrender or ~~[a]~~ service charge~~[a]~~ will be deducted from the policy values unless specifically provided in the policy.

D. Companies may, with written consent of the policyholder, offer a policy loan in lieu of cash surrender as a means to conserve business, but only if the following criteria are strictly adhered to:

(1) The computation of ~~[cash]~~ policy values and premium deductions, if any, will be calculated on the same basis as enumerated in B above.

(2) The policyholder must be informed fully and concisely as to the reasons the company is sending the proceeds of a policy loan as opposed to the ~~[policy value]~~ cash surrender value, an explanation as to the effect the loan will have upon interest charges, premiums, and death benefits, and the procedures for the repayment of the loan.

(3) ~~[Applications for the surrender of a policy for cash value shall be processed within 20 days.]~~ If a policy loan check is issued in lieu of cash surrender values, the loan shall be processed within 20 days of receipt of the request to surrender. [the] The check for policy loan values must be immediately negotiable [for either the payment of policy loan values or the partial payment of cash surrender values]. [If the check is issued for policy loan values only, a] A stamped, self-addressed envelope and a cash surrender form must accompany the loan value check, together with appropriate instructions as to how the policyholder should proceed to obtain the full policy surrender value. A request for the balance of the cash surrender value must be processed within ten days of receipt of such request.

R590-98-7. Penalty.

Insurers found in violation of this rule shall be subject to revocation of the Certificate of Authority or such other penalty as determined by the commissioner in accordance with law.

R590-98-8. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

R590-98-9. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date.

KEY: insurance law

~~[1989]~~ 2005

Notice of Continuation April 28, 2004

31A-2-201



Insurance, Administration
R590-166-4
 Rule

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 28269

FILED: 09/30/2005, 11:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to comply with changes made to department fees in S.B. 122 that passed the 2003 Legislature. (DAR NOTE: S.B. 122 (2003) is found at UT L 2003 Ch 65, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: In Section R590-166-4 of the rule, the wording "and pay filing fees" is being eliminated since there is no longer a requirement to pay a filing fee with each rate and form filing. It is now done once a year as a part of the renewal.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-6a-110

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to this rule actually took effect two years ago. It had the effect of no longer requiring the insurer to cut a check whenever they filed a form or rate filing and eliminated the need for the department to account for and deposit money with each filing. The revenue impact was designed to be neutral as a result of this change. Currently there are 84 service contract providers. Before the change in the filing fee, these providers paid \$25 per filing. Now they pay an annual fee of \$200. Whether or not this increases or decreases the state budget will depend on the number of filings each made during the year. That number will change from year to year.

❖ LOCAL GOVERNMENTS: The changes to this rule will not affect local government since the rule and the changes only deal with the relationship between the insurer, their insureds, and the Insurance Department.

❖ OTHER PERSONS: The change to this rule eliminates the wording that a filing fee payment will accompany the filing of a provider contract or change to that contract. Since the change in 2003, fees for rate and form filings are now included in the annual service fee paid at renewal. This eliminates the cost and time required for service contract providers to cut a check for each filing and then to put it through the system. Currently there are 84 service contract providers. Before the change in the filing fee these providers paid \$25 per filing. Now they pay an annual fee of \$200. Whether or not this increases or decreases costs to them depends on the number of filings each provider makes each year. That number will change from year to year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to this rule eliminates the wording that a filing fee payment will accompany the filing of a provider contract or change to that contract. Since the change in 2003, fees for rate and form filings are now included in the annual service fee paid at renewal. This eliminates the cost and time required for service contract providers to cut a check for each filing and then to put it through the system. Currently there are 84 service contract providers. Before the change in the filing fee these providers paid \$25 per filing. Now they pay an annual fee of \$200. Whether or not this increases or decreases costs to them depends on the number of filings each provider makes each year. That number will change from year to year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will create no fiscal impact on Utah businesses at this time. The impact of the annual service and filing fee payment would have been felt one to two years ago when S.B. 122 went into effect. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-166. Home Protection Service Contract Rule.****R590-166-4. Rule.**

A. Upon prior written notification to the commissioner, home protection companies doing business in this state who are, at the time of notification, in compliance with all the terms and provisions set forth in this rule and are in compliance with all of the terms and provisions of Chapter 6a of Title 31A, except those terms and provisions specifically exempted herein, shall be exempt from the requirements of Subsections 31A-6a-103(1), 31A-6a-103(2)(a) and 31A-6a-103 (2)(b) and the requirements of Subsections 31A-6a-104(2) and (8); provided, however, that nothing herein shall abrogate the requirement that home protection companies file copies of the service contracts to be used in this state, and any modifications thereto~~[-and pay filing fees]~~ as would otherwise be required pursuant to Subsections 31A-6a-103(2)(a) and (b). So long as a home protection company remains in compliance with this rule, the home protection company's election to be subject to this rule shall remain in effect until written notification to the commissioner by the company of the company's withdrawal of its election. Notwithstanding the foregoing, home protection companies who are doing business in this state prior to the effective date of this rule and who elect to be subject to this rule as of the rule's effective date shall have until 60 days from the rule's effective date to attain compliance with all the terms and provisions of the rule.

B. To assure the faithful performance of its obligations to its contract holders the home protection company shall deposit in accordance with Section 31A-2-206 an amount not less than \$10,000 for each 500 home protection service contracts in force in this state, but not to exceed \$100,000. In the event of any failure of the home protection company to perform its obligations to its contract holders,

the commissioner may make equitable distributions to contract-holders from funds held on deposit.

C. In lieu of the deposit required in paragraph B above, a surety bond or irrevocable letter of credit in favor of the commissioner for \$50,000 may be filed by the home protection company. When, based on the home protection company's annual report pursuant to Section 5(A) hereof, the number of home protection service contracts issued by a protection company then in force in this state exceeds 2,500, the amount of the surety bond or letter of credit shall be increased to \$100,000. The bond shall be issued by an insurer authorized to transact surety business in this state. Any letter of credit shall be from a bank approved by the commissioner and in a form acceptable to the commissioner. The surety bond or letter of credit shall be held for the same purpose as the deposit in lieu of which it is filed. No bond or letter of credit shall be cancelled or subject to cancellation unless at least 30 days advance notice, in writing, thereof is filed with the commissioner and evidence of other security is provided.

D. The securities, bond or letter of credit of a home protection company deposited as required by this rule shall constitute a claim fund to be administered by the commissioner for the benefit of persons sustaining actionable injury due to the insolvency or impairment of the home protection company. The commissioner may, at his option, seek assumption of an insolvent home protection company's obligations and business by a solvent company, and apply the insolvent home protection company's deposit or proceeds of any surety bond or letter of credit to this purpose.

E. Any deposit, surety bond or letter of credit shall be maintained unimpaired as long as the home protection company continues to do business in this state. Whenever the home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for all its obligations to its home protection service contract holders in this state, the commissioner shall authorize release of the deposited securities, surety bond or letter of credit on file at that time.

KEY: insurance

~~1994~~**2005**

Notice of Continuation April 28, 2004

31A-2-201

31A-6a-110



Labor Commission, Adjudication

R602-2-3

Compensation for Medical Testimony

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28259

FILED: 09/29/2005, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to increase compensation for medical experts serving on medical panels, thereby increasing the willingness of physicians to serve on such panels.

SUMMARY OF THE RULE OR CHANGE: This amendment increases the compensation for medical panel members from \$87.50 per half hour to \$112.50 per half an hour, and the medical panel chairman's compensation from \$100 per half hour to \$125 per half an hour. This rule change also clarifies that this rule pertains to medical panel members.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no impact on the State's general funds budget. The increase of compensation will be paid from the Uninsured Employers' Fund's (UEF) funds, which are generated from an assessment against workers' compensation premiums.

❖ LOCAL GOVERNMENTS: There will be no appreciable cost or savings to local governments because this program is administered entirely by the State of Utah.

❖ OTHER PERSONS: Self insureds' and workers' compensation insurance companies will incur approximately \$84,000 in additional costs, in the form of workers' compensation premium assessments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this amendment because the amendment does not require any action on the part of affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost of this proposal (\$84,000) is spread among all insured and self-insured employers within Utah and will have no appreciable fiscal impact on businesses. R. Lee Ellertson, Commissioner

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

LABOR COMMISSION

ADJUDICATION

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:

Richard M. Lajeunesse at the above address, by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: R Lee Ellertson, Commissioner

R602. Labor Commission, Adjudication.**R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-3. Compensation for Medical ~~Testimony~~ Panel Services.**

Compensation for medical panel ~~services, including records review, examination, report preparation and~~ ~~medical~~ testimony, ~~and preparation by medical panel members at hearings~~ shall be ~~\$(87.50)~~ 112.50 per half hour ~~[and shall be] for medical panel members and~~ ~~\$(100)~~ 125 per half hour for the medical panel chair.

KEY: workers' compensation, administrative procedures, hearings, settlements

~~December 2, 2004~~ 2005

Notice of Continuation September 5, 2002

34A-1-301 et seq.

63-46b-1 et seq.



Labor Commission, Safety
R616-2-3
 Safety Codes and Rules for Boilers and
 Pressure Vessels

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28257

FILED: 09/23/2005, 13:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to adopt the most recent (July 1, 2005) addenda for the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, specifically Sections I, IV and VIII.

SUMMARY OF THE RULE OR CHANGE: The proposed rule change adopts the 2005 addenda for ASME standards for boilers and pressure vessels, specifically Section I Rules for Construction of Power Boilers, Section IV Rules for Construction of Heating Boilers and Section VIII Rules for Construction of Pressure Vessels, all published July 1, 2005.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASME Boiler and Pressure Vessel Code (2004) Section I 2005 addenda published July 1, 2005; ASME Boiler and Pressure Vessel Code (2004) Section IV 2005 addenda published July 1, 2005; and ASME Boiler and Pressure Vessel Code (2004) Section VIII addenda published July 1, 2005

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There should be no cost or savings to the State budget with this rule change because the standards being adopted have already been incorporated into the Boiler and Pressure Vessel industry.

❖ **LOCAL GOVERNMENTS:** There should be no cost or savings to local governments with this rule change because the standards being adopted have already been incorporated into the Boiler and Pressure Vessel industry.

❖ **OTHER PERSONS:** There should be no cost or savings to other persons with this rule change because the standards being adopted have already been incorporated into the Boiler and Pressure Vessel industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The ASME addenda will not increase compliance costs for affected persons, i.e., manufactures or owner/operators, as the standards have already been implemented within the industry.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The primary purpose of adopting the ASME addenda is to incorporate the most current industry standards as Utah standards. R. Lee Ellertson, Commissioner

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

LABOR COMMISSION
 SAFETY
 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:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: R Lee Ellertson, Commissioner

R616. Labor Commission, Safety.

R616-2. Boiler and Pressure Vessel Rules.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2004).

1. Section I Rules for Construction of Power Boilers published July 1, 2004, and the 2005 Addenda published July 1, 2005.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2004, and the 2005 Addenda published July 1, 2005.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2004, and the 2005 Addenda published July 1, 2005.

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2004) issued December 31, 2004.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501 (1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

KEY: boilers, certification, safety

[March 7], 2005

Notice of Continuation January 10, 2002

34A-7-101 et seq.

▼ ————— ▼

Labor Commission, Safety **R616-3-3** Safety Codes for Elevators

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28256

FILED: 09/23/2005, 13:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to adopt the American Society of Mechanical Engineers (ASME) A17.1a 2005 Addenda and (ASME) A17.1S 2005 Supplement for Elevators and Escalators.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates by reference the ASME A17.1a 2005 Addenda and the ASME A17.1S 2005 Supplement to meet current Elevator and Escalator codes. Every year a new addendum is issued.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASME A17.1a-2005 issued April 29, 2005; and A17.1S-2005 issued August 12, 2005

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Safety Division does not anticipate any effect on the state budget related to administration of the updated standards, nor should there be any compliance costs,

as the standards have already been implemented within the elevator and escalator industry.

❖ LOCAL GOVERNMENTS: There should be no decrease or increase in cost for local governments, as the standards have already been implemented within the elevator and escalator industry.

❖ OTHER PERSONS: There should be no decrease or increase in cost for other persons, as the standards have already been implemented within the elevator and escalator industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes will not increase compliance costs for affected person, such as manufactures or owner/operators, because the standards have already been implemented within the elevator and escalator industry.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The primary purpose of adopting the addenda and supplement is to incorporate additions and changes to the standards. Any such additions and changes, have already been incorporated in the practices of the elevator industry. R. Lee Ellertson, Commissioner

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

LABOR COMMISSION
SAFETY
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:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: R Lee Ellertson, Commissioner

R616. Labor Commission, Safety.

R616-3. Elevator Rules.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 2004 ed. issued April 30, 2004, ASME A17.1a-2005 issued April 29, 2005, and ASME A17.1S-2005 issued August 12, 2005, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and

fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 2003 International Building Code.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-2003 Safety Standard For Platform Lifts And Stairway Chairlifts, issued July 29, 2003.

KEY: elevators, certification, safety

~~February 1~~, 2005

Notice of Continuation January 10, 2002

34A-1-101 et seq.



Natural Resources, Wildlife Resources **R657-56** Recreational Lease of Private Lands for Free Public Walk-in Access

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 28263

FILED: 09/29/2005, 17:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being proposed pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input. The purpose of this rule is to provide the standards, procedures and requirements necessary to administer a three-year walk-in access pilot program to compensate private landowners for a recreational lease of their property to allow free public walk-in access for fishing, hunting, and trapping. In addition, the Appropriations Act (S.B. 1, Item 188) which was proposed during the 2004 Legislative Session and signed by the Governor on 03/23/2004, provided the following intent language: It is the intent of the Legislature that the Habitat Council and the Blue Ribbon Fisheries Advisory Council advise the division director and recommend expenditure of resources toward a three-year pilot walk-in access program. (DAR NOTE: S.B. 1 (2004) is found at UT L 2004 Ch 256, and was effective 07/01/2004.)

SUMMARY OF THE RULE OR CHANGE: This rule provides the standards, procedures, and requirements to administer a three-year walk-in access pilot program in the Northern

Region of the Division of Wildlife Resources (DWR) to compensate private landowners for a recreational lease of their property to allow free public walk-in access for fishing, hunting, and trapping.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18, 23-14-19, and 57-14-1

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--This is a three-year pilot program and the associated costs have been funded with monies from existing funding sources. Therefore, DWR determines that this rule 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 this rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** Private landowners will be compensated by DWR through a recreational lease but it is not anticipated that it will produce a cost or savings for them. This rule does not impose any additional requirements on other persons, and because this rule provides for free public access, DWR has determined that this rule does not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is proposed to compensate private landowners for allowing free walk-in access to the public and does not impose any cost requirements for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses. Michael R. Styler, Executive Director

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:

Angela VanScoyk at the above address, by phone at 801-538-4707, by FAX at 801-538-4709, or by Internet E-mail at angelavanscoyk@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-56. Recreational Lease of Private Lands for Free Public Walk-in Access.****R657-56-1. Purpose and Authority.**

Under the authority of Sections 23-14-18, and 23-14-19, this rule provides the procedures, standards, and requirements to administer a three-year walk-in access pilot program in the Northern Region to compensate private landowners for a recreational lease of their property for allowing free public walk-in access to fish, hunt, or trap.

R657-56-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Northern Region" for the purposes of this rule, means private property located within all of, or portions of, the following counties: Box Elder, Cache, Davis, Rich, Morgan, Tooele, Summit, Salt Lake, Duchesne, Daggett and Wasatch counties. The boundary begins at the Utah-Nevada state line and I-80 at Wendover, east along I-80 to US-40; south along US-40 to SR-32; east along SR-32 to SR-35 at Francis; east along SR-35 to Soapstone Basin Road (USFS Road 037); north along Soapstone Basin Road (USFS 037) to SR-150; northeast along SR-150 to the Summit- Duchesne county line (summit of the Uinta Mountains) to the Wasatch-Ashley National Forest boundary; north along the Wasatch-Ashley National Forest boundary to USFS Road 058; east along USFS 058 to USFS Road 221 (Birch Creek); north along USFS Road 221 to the Utah-Wyoming state line; west and north along the Utah-Wyoming state line to the Utah-Idaho state line; west along the Utah-Idaho state line to the Utah-Nevada state line; south along the Utah-Nevada state line to I-80 at Wendover.

(b) "Private landowner" means any individual, partnership, corporation, or association that possesses the legal right on private property to grant a recreational lease.

(c) "Recreational lease activities" means recreation limited to fishing, hunting or trapping as provided in the recreational lease agreement.

(d) "WIA" means walk-in access.

(e) "WIFA" means walk-in fishing access, which provides free public access to fish waters located on private property as provided in the recreational lease agreement, and includes trapping when the landowner designates this activity in the WIFA recreational lease agreement.

(f) "WIHA" means walk-in hunting access, which provides free public access to hunt private property as provided in the recreational lease agreement, and includes trapping when the landowner designates this activity in the WIHA recreational lease agreement.

R657-56-3. Walk-In Access Enrollment Procedures.

(1) A private landowner with eligible property located within the Northern Region may participate in the WIA program.

(2) A private landowner interested in participating in the WIA program must submit an enrollment form to the Northern Region division office by March 1, and provide:

(a) evidence of property ownership, or if leasing the private property a copy of the lease agreement; and

(b) the private landowner's signature.

(3) Enrollment forms are available at the Northern Region division office or through the division's web site.

R657-56-4. Walk-In Access Recreational Lease Agreement.

(1) The division and private landowner shall prepare and agree to the terms in a WIA recreational lease agreement by May 1.

(2) Terms in the WIA recreational lease agreement shall include private landowner and division responsibilities, including the provisions as provided in Sections R657-56-8 and R657-56-9, and compensation necessary to provide free public access for fishing, hunting, or trapping on private property.

(3) The amount of compensation to be paid to the private landowner participating in the WIA program shall be determined by:

(a) the type of recreational lease activity allowed on the private property;

(b) the duration of the recreational lease agreement; and

(c) the number of acres of private land or pond, or miles of stream or river available for free public walk-in access.

(4) Upon mutual agreement, the division may provide in-kind habitat improvement materials or labor on WIA property in lieu of monetary payment to the landowner for free public walk-in access.

R657-56-5. Walk-In Hunting Access Program Requirements.

(1) Private property enrolled in the WIHA Program must provide suitable wildlife habitat to support the recreational lease activity described in the WIHA recreational lease agreement, and:

(a) contain a minimum of 80 contiguous acres;

(b) contain a minimum of 40 contiguous acres of wetland or riparian land; or

(c) provide an access corridor to comparable tracts of isolated public land open to free public hunting or trapping.

(2)(a) Division personnel shall evaluate proposed WIHA property to determine if the property provides suitable wildlife habitat and wildlife for the designated recreational lease activity.

(b) If the property is approved as suitable wildlife habitat for the designated recreational lease activity, the division and private landowner may enter into the WIHA recreational lease agreement as provided in Section R657-56-4.

R657-56-6. Walk-In Fishing Access Requirements.

(1) Private property enrolled in the WIFA Program must provide suitable fishing waters described in the WIFA recreational lease agreement, and:

(a) contain a minimum 0.25 miles of stream or river;

(b) contain a minimum 5 acres of pond; or

(c) the property provides an access corridor to comparable fishing waters on isolated public land open to free public fishing.

(2)(a) Division personnel shall evaluate proposed WIFA property to determine if the property provides suitable fishing waters.

(b) If the property is approved for the designated recreational lease activity, the division and private landowner may enter into the WIFA recreational lease agreement as provided in Section R657-56-4.

R657-56-7. Walk-In Hunting and Fishing Access Compensation.

(1) The amount of compensation payment to a landowner is determined by the acreage that will be used for the WIA program, and the recreational lease activity allowed on the private property using the base rate fee as provided in the recreational lease agreement.

(2) A bonus fee will be added to the base rate fee when a private landowner initially enrolls private property in the

recreational lease agreement for additional consecutive years as follows:

- _____ (a) five percent will be added for two years; or
- _____ (b) ten percent will be added for three years.

R657-56-8. Walk-In Access Program Landowner Responsibilities.

_____ (1) Each private landowner enrolled in the WIA program must provide:

- _____ (a) free public walk-in access for recreational lease activities as provided in the recreational lease agreement; and
- _____ (b) private land with suitable wildlife habitat to support the recreational lease activity; or
- _____ (c) an access corridor to comparable tracts of isolated public land open to free public fishing, hunting or trapping.

_____ (2) Each private landowner must indicate the type of landowner authorization required for the public to use the WIA for fishing, hunting, or trapping, as follows:

- _____ (a) authorization is not required to access the property;
- _____ (b) registration at a WIA site is required prior to accessing the property; or
- _____ (c) contacting the landowner is required prior to accessing the property.

_____ (3) The private landowner must transfer to the division, the recreational lease of their property for the recreational lease activities designated in the WIA recreational lease agreement.

R657-56-9. Walk-In Access Program Division Responsibilities.

_____ The division shall provide:

- _____ (1) evaluations of wildlife habitat, and wildlife on the proposed WIA property as provided in Subsections R657-56-5(2)(a) or R657-56-6(2)(a);
- _____ (2) WIA recreational lease agreement forms;
- _____ (3) WIA registration forms and boxes when applicable;
- _____ (4) signs for enrolled WIA property;
- _____ (5) law enforcement during applicable fishing, hunting, or trapping seasons;
- _____ (6) maps of approved and enrolled WIA locations and requirements as provided in the recreational lease agreement; and
- _____ (7) compensation payments to landowners following successful completion of the terms of the WIA recreational lease agreement.

R657-56-10. Termination of Walk-In Access Recreational Lease Agreement.

_____ (1) The WIA recreational lease agreement may be:

- _____ (a) terminated for any reason by either party upon 30 days written notice; or

_____ (b) amended at any time upon written agreement by the landowner and the division.

_____ (2) If a WIA recreational lease agreement is terminated as provided in Subsection (1)(a), prior to the ending date specified in the recreational lease agreement, the compensation payment fee shall be prorated based upon the recreational lease activity provided.

_____ (3) Restriction of public use by the landowner of the private property enrolled in the WIA program in violation of the recreational lease agreement may void all or a portion of the WIA recreational lease agreement.

_____ (4) Any change in private landownership of enrolled WIA property may terminate the WIA recreational lease agreement.

_____ (5) Misrepresentation of enrolled private property in the WIA program shall terminate the WIA recreational lease agreement.

R657-56-11. Liability Protection for Walk-In Access Private Landowner.

_____ Landowner liability may be limited when free public access is allowed on private property enrolled in the WIA program for the purpose of any recreational lease activities as provided in Section 57-14.

R657-56-12. Licenses, Permits and Seasons.

_____ (1) Any person accessing WIA private lands to fish, hunt, or trap must obtain and possess the required valid license or permit for the recreational lease activity, and must adhere to the respective rules and proclamations established by the Wildlife Board.

_____ (2)(a) If enrolled WIA property requires prior private landowner authorization or any other requirement as provided in the recreational lease agreement, any person entering enrolled WIA private lands to fish, hunt, or trap must comply with said requirements.

_____ (b) The division shall provide to the public maps of approved and enrolled WIA locations and requirements as determined in the recreational lease agreement.

R657-56-13. Right to Deny Access.

_____ The division or the private landowner reserves the right to deny a person access to the WIA property described in the recreational lease agreement for causes related to, but not limited to, intoxication, damage to WIA property, violations of conditions provided in the recreational lease agreement, or any wildlife violation committed on WIA property.

R657-56-14. Prohibited Activities.

_____ (1) It is unlawful for any person to access WIA property in violation of the recreational lease agreement, or refuse to leave WIA property when requested by the landowner, a division representative, or a peace officer.

_____ (2) Any person accessing WIA property in violation of Subsection (1) may further be subject to criminal trespass prosecution as provided in Sections 23-20-14 and 76-6-206.

R657-56-15. Walk-In Access Advisory Committee.

_____ (1) A WIA Advisory Committee shall be created consisting of five members nominated by the Northern Region Supervisor, and approved by the Director.

_____ (2) The committee shall include:

- _____ (a) two sportsmen representatives;
- _____ (b) two agricultural representatives;
- _____ (c) one elected official; and
- _____ (d) the division's Wildlife Section Chief, or designee.

_____ (3) The committee shall be chaired by the Wildlife Section Chief, or designee, who shall be a non-voting member.

_____ (4) The committee will:

- _____ (a) hear complaints dealing with fair and equitable treatment of anglers, hunters, or trappers on enrolled WIA property;
 - _____ (b) hear complaints dealing with fair and equitable treatment of WIA private landowners; and
 - _____ (c) make advisory recommendations to the Director.
- _____ (5) The Wildlife Section Chief shall determine the agenda, time, and location of the WIA Advisory Committee meetings.

(6) The director may mitigate or resolve issues dealing with complaints.

(7) Appointment terms for committee members will expire at the end of the three-year pilot WIA Program.

KEY: wildlife, private landowners, public access
2005

23-14-18

23-14-19

57-14-1

▼ ————— ▼

Public Safety, Criminal Investigations and Technical Services, Criminal Identification **R722-300** Concealed Firearm Permit Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28250

FILED: 09/20/2005, 10:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set forth the process whereby the Criminal Investigations and Technical Services Division administers the Concealed Weapons Act in accordance with Title 53, Chapter 5, Part 7. The Concealed Weapon Review Board passed several resolutions requesting the changes in order to clarify statute and aid in the appeal process.

SUMMARY OF THE RULE OR CHANGE: In Section R722-300-3, this change corrects administrative rule references, explicitly provides a definition for "crimes of violence", adds types of criminal conduct to the definition of "moral turpitude", and adds an offense to the definition of "offenses involving the use of alcohol. The changes in Section R722-300-4 reflect statutory changes for employment and residential which were removed, as is the requirement for two letters of character reference, the criminal history check is expanded, payment amounts are increased for renewal applications, the exemptions for retired law enforcement officers is modified. Sections R722-300-6 and R722-300-7 are removed and replaced by a new Section R722-300-6 dealing with non-resident and non-U.S. citizen applicants; subsequent sections are renumbered. Section R722-300-12 (to become Section R722-300-11) now includes instructor certification in the list of permits or licenses that can be denied, suspended, or revoked. In Section R722-300-14 (to become Section R722-300-13), a statutory reference is altered, the mode of payment for a concealed firearm permit instructor applicant is changed and the applicant is now required to provide the division with a current National Rifle Association (NRA) certification certificate. In Section R722-300-16 (to become Section R722-300-17), a statutory reference is corrected.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-5-701 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated cost or savings to the state budget as these are technical changes.
- ❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government as these are technical changes.
- ❖ OTHER PERSONS: There are no anticipated cost or savings to other persons as these are technical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No anticipated cost. The change in fees from \$5 to \$10 was enacted by legislation in 1999 (H.B. 237), but the rule was never updated. Therefore there should not be any additional compliance costs for affected persons. (DAR NOTE: H.B. 237 (1999) is found at UT L 1999 Ch 227, and was effective 07/01/1999.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As the Commissioner of the Utah Department of Public Safety, I have reviewed the changes to this Utah Administrative Rule. I hereby approve the changes and this rulemaking action bears no cost, i.e. has "no impact." The increase in registration fees from \$5 to \$10 simply reflects the statutory change enacted by Utah's "Concealed Weapons Act" (Sections 53-5-701 through 53-5-711) and this amendment simply updates the rule with current law. Robert Flowers, Commissioner

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND
TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joyce Carter at the above address, by phone at 801-965-4576, by FAX at 801-965-4944, or by Internet E-mail at joycecarter@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 12/01/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 01/03/2006

AUTHORIZED BY: Ed McConkie, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-300. Concealed Firearm Permit Rule.

R722-300-1. Purpose.

The purpose of this rule is to set forth the process whereby the Criminal Investigations and Technical Services Division administers

the Concealed Weapons Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Subsection 53-5-704(17).

R722-300-3. Definitions.

Terms used in this rule shall be defined as follows:

A. "Affidavit" means a written statement made under oath before a notary public.

B. "Approved firearms instructor" means a person approved by the Division who can certify that an applicant meets the general firearm familiarity requirement of Subsection 53-5-704(8)(a) and is an instructor who is certified pursuant to Section ~~[R724-4-14]~~R722-300-13.

C. "Board" means the Concealed Weapons Review Board referred to in Section 53-5-703.

D. "Concealed" means that which is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

E. "Crime of violence" ~~[means any crime defined as such in Subsection 76-10-501(2)(b)].~~means any crime involving: interference with police officer; fleeing; resisting arrest; failure to obey police officer; obstruction of justice;

F. "Division" means the Criminal Investigations and Technical Services Division of the Utah Department of Public Safety.

G. "Domestic violence" means any of the crimes listed in Subsection 77-36-1(2) when committed by one ~~[co-habitant]~~intimate partner against another.

H. "Equivalent experience with a firearm through participation in law enforcement" means experience showing that the applicant has within the last five years met the firearms requirement of his/her department as evidenced by verifiable documentation from his/her department.

I. "Equivalent experience with a firearm through participation in the military" means experience showing that the applicant has within the last five years successfully met the firearms requirements of his/her military organization as evidenced by verifiable documentation from his/her military organization, provided that such training meets the requirements of Subsection 53-5-704(8)(a).

J. "Equivalent experience with a firearm through participation in an organized shooting competition" means experience showing that the applicant has within the last five years competed in an organized shooting competition as evidenced by verifiable documentation from the organization sanctioning or conducting the organized shooting competition, provided the organized shooting competition meets the requirements of Subsection 53-5-704(8)(a).

K. "Felony" means any criminal conduct other than those crimes defined as misdemeanors or infractions by the statutes of this state. It also includes any criminal conduct that is punishable by more than one year in prison by a federal statute, or by the statute of some other state.

L. "Mitigating circumstances" means circumstances which reduce culpability for purposes of assessing good character.

M. "Moral turpitude" means a conviction for criminal conduct under the statutes of this state or any other jurisdiction involving any of the following offenses:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. robbery; or aggravated robbery;

~~6. aggravated robbery;~~interference with police officer;

~~7. fleeing; resisting arrest; failure to obey police officer;~~

~~8. obstruction of justice;~~

~~[7]9. bribery;~~

~~[8]10. perjury;~~

~~[9]11. extortion;~~

~~[10]12. arson or aggravated arson;~~

~~[11]13. criminal mischief;~~

~~[12]14. falsifying government records;~~

~~[13]15. forgery;~~

~~[14]16. receiving stolen property;~~

~~[15]17. firearms violations;~~

~~[16]18. burglary or aggravated burglary;~~

~~[17]19. vandalism;~~

~~[18]20. kidnaping, aggravated kidnaping, or child kidnaping;~~

~~[19]21. crimes involving unlawful sexual conduct as described in~~

Title 76, Chapter 5, Part 4, Chapter 5a, Chapter 7, Part 1, and Chapter 10, Part 13; ~~Chapter 9, Part 702-702.5, indecent exposure or public~~

~~urination may result in revocation, suspension or denial, and~~

~~[20]22. violations of the pornographic and harmful materials and performances act, as defined in Title 76, Chapter 10, Part 12.~~

N. "Offenses involving the use of alcohol" means any of the following offenses:

1. any violation of Sections 41-6-44 through 41-6-44.20;

including alcohol related reckless driving.

2. violations of Title 32A, Chapter 12, Part 2 involving the illegal use or consumption of an alcoholic beverage; and

3. a violation of Section 76-10-528.

O. "Offenses involving the use of narcotics" means any offense involving the use, possession, manufacturing or distribution of any narcotic or drug as defined in Title 58, Chapter 37, 37a, 37b, 37c, 37d, and 37e or a violation of Section 76-10-528.

P. "Past pattern of behavior" means verifiable incidents, with or without an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others.

R722-300-4. Application For a Concealed Firearm Permit.

A. Application for a permit to carry a concealed firearm shall be made in writing to the Division on forms provided by the Division. An application package shall include:

1. a completed application form;

2. proof that the applicant is 21 years of age or older at the time application is made;

3. evidence of general familiarity with the types of firearms to be concealed, verified by a signed certificate from an approved firearms instructor;

~~4. a five year employment history;~~

~~5. a five year residential history;~~

~~6. two letters of character reference;~~

~~[7]4. [two]one recent color photograph[s] of passport quality, [measuring 2"x 2";]~~and

~~[8]5. [two]one completed fingerprint card[s].~~

B. An applicant shall pay a non-refundable processing fee of \$59.00 at the time the application is filed. This fee consists of \$35.00 mandated by Section 53-5-707 and a \$24.00 Federal Bureau of Investigation finger print processing fee. ~~[Payment shall be in the form of cash, cashier's check, or money order.]~~Payment may be in the form of cash, check, money order, or credit card. The Division is not responsible for cash lost in the mail.

C. An applicant may request an interview prior to submitting the application. The Division may require an interview subsequent to the submission of the application.

D. A background investigation shall be conducted on all applicants to determine if they are of good character as required by Section 53-5-704. The background investigation shall consist of:

1. verifying the accuracy of the application information;
2. checking the applicant's criminal history through local, state and national computer files which include:
 - a. Utah computerized criminal history;
 - b. national crime information center;
 - c. Utah law enforcement information network;
 - d. drivers license information;
 - e. statewide warrants file;
 - f. criminal justice juvenile files;
 - g. criminal history expungement system; ~~and~~
 - h. national instant check system ~~(when available);~~ and
 - i. immigration and naturalization service when applicable.

3. The fingerprint cards will be sent to the FBI for a review of the applicant's criminal history record pursuant to Sections 53-5-704 and 706.

E. The Division will review all the above information and approve or deny the application.

1. Notice of approval may be given by telephone or in writing.
2. Notice of denial shall be given in writing and shall state the reasons for denial.

F. Renewal of a permit to carry a concealed firearm is required every ~~two~~ five years.

1. The renewal form is available from the Division or on the Bureau website.

2. A renewal applicant shall pay a non-refundable fee of ~~\$[5]~~ 10.00 as required by Section 53-5-707. ~~[Payment shall be made in the form of cash, cashier's check or money order.] Payment shall be in the form of cash, check, money order, or credit card.~~ The Division is not responsible for cash lost in the mail.

G. A ~~peace officer~~ law enforcement officer as defined under Section 53-13-103 who has honorably retired from full-time employment within five years of making application shall be exempt from the following requirements:

1. ~~two letters of character reference; and~~
2. ~~two~~ one set[s] of fingerprints.

R722-300-5. Temporary Concealed Firearm Permit.

A. To be eligible to obtain a temporary permit to carry a concealed firearm, as provided for in Section 53-5-705, an applicant must:

1. apply for a permit under Section 53-5-704;
2. apply for a temporary permit under Section 53-5-705;
3. demonstrate good character; and
4. prove to the satisfaction of the Division extenuating circumstances justifying the need for a temporary permit.

B. Provisions regarding denial, suspension or revocation of a temporary permit are set forth in ~~S[ubs]ection [R724-4-18(F)]~~ R722-300-11.

R722-300-6. Non-Resident and Non-U.S. Citizen Concealed Firearm Permit Applicants.

A. Non-resident and Non-U.S. citizen applicants for a concealed firearm permit will be subject to the same application process as in-state applicants.

B. Non-U.S. citizen applicants must show proof of a hunting permit and or must meet standards of Federal Firearm Regulation.

[R722-300-6. Out of State Concealed Firearm Permit Applicants.

~~Out of state applicants for a concealed firearm permit will be subject to the same application process as in-state applicants.~~

R722-300-7. Out of State Concealed Firearm Permits.

~~A. In accordance with Subsection 76-10-523(2)(b) the Division will conduct research annually to determine which states have requirements for the issuance of a concealed firearm permit that meet or exceed the requirements for issuance of a concealed firearm permit in this state.~~

~~B. A list of the out of state permits that will be honored in this state will be maintained by the Division. The list will be available to the public upon request.~~

[R722-300-18]7. Application for a Certificate of Qualification.

A. Application for a certificate of qualification shall be made in writing to the Division on forms provided by the Division and will be subject to the same application requirements as concealed firearm permit applicants set forth in Section ~~[R724-4-4]~~ R722-300-4. The applicant must also provide proof to the satisfaction of the Division that they are a law enforcement official or judge as defined in Section 53-5-711.

B. A certificate of qualification will act as identification to verify that the holder is exempt from weapons laws in accordance with Section 76-10-523.

R722-300-19]8. Additional Training Requirements for Obtaining a Certificate of Qualification.

Training requirements for obtaining a certificate of qualification, as set forth in Subsection 53-5-711(2)(b), will be established by the commissioner. A copy of the training requirements will be available in the Division office upon request. The commissioner may make changes or additions to the training requirements as needed. It is the responsibility of the applicant to acquire the training through their agency.

R722-300-14]9. Annual Requalification Requirement for Obtaining a Certificate of Qualification.

Proof of annual requalification must be submitted to the Division, in writing, no earlier than November 1 and no later than November 30 of each year. If an applicant has received an initial certificate of qualification after August 1, requalification will not be required until the following year. Failure to provide proof of annual requalification by November 30 of each year will result in revocation of the certificate of qualification.

R722-300-14]10. Duty of Certificate of Qualification Holder to Notify the Division Upon Termination of Status as a Law Enforcement Official or Judge.

A certificate of qualification holder who resigns or is terminated from their position must notify the Division within six months after leaving their position. If the holder obtains other employment as a Law Enforcement Official or Judge within the six month period, the Division will allow the certificate of qualification to remain current provided the holder has not committed an offense that is grounds for revocation under Title 53 Chapter 5 Part 7. If a holder of a certificate of qualification has not obtained another position as a Law Enforcement

Official or Judge, the certificate of qualification will be revoked and a concealed firearm permit will be issued provided the holder has not committed an offense that is grounds for revocation under Title 53 Chapter 5 Part 7.

R722-300-~~14~~11. Denial, Suspension, or Revocation of a Concealed Firearm Permit or Certificate of Qualification.

A concealed firearm permit or certificate of qualification may be denied, suspended or revoked for any of the reasons set forth in Subsections 53-5-704 (3)(a) and (c), or for failure to maintain good character as defined in Subsection 53-5-704(2).

R722-300-~~14~~12. Requirement to Notify Peace Officer When Stopped.

When a concealed firearm permit holder or certificate of qualification holder is stopped for questioning by a peace officer based on reasonable suspicion in accordance with Section 77-7-15 and the holder has a concealed firearm in his/her possession, the holder shall immediately advise the peace officer that he/she is a lawful holder and has a concealed firearm in his/her possession.

R722-300-~~14~~13. Concealed Firearm Permit Instructors.

A. The Division will certify concealed firearm permit instructors as provided for in ~~Sub~~section 53-5-704~~(8)(b)(ii)]~~.

B. "Approved firearms instructor" means a person approved by the Division who can certify that an applicant meets the general firearm familiarity requirement of Subsection 53-5-704(8)(a) and is an instructor who is certified pursuant to Section R722-300-13.

~~B]C.~~ Application to become a concealed firearm permit instructor shall be made in writing to the Division on forms provided by the Division. The application shall include:

1. a completed application form;
2. evidence that the applicant has completed a firearms instructor training program sponsored by the National Rifle Association, or Peace Officer Standards and Training, or a program equivalent thereto; and
3. a notarized release of information form.

~~C]D.~~ A concealed firearm permit instructor applicant shall pay a non-refundable fee of \$5.00. ~~[Payment shall be made in the form of cash, cashier's check or money order.]~~ Payment shall be in the form of cash, check, money order, or credit card. The Division is not responsible for cash lost in the mail.

E. A concealed firearm permit instructor shall provide the Division with a current NRA certification certificate every 3 years or as renewed by the NRA. NRA instructor certification must be current.

~~D]E.~~ The applicant must submit with the application a copy of a course of instruction that meets the course content requirements established by the Division as required by Subsection 53-5-704(8)(a).

~~E]G.~~ The applicant must meet the good character requirements set forth in Subsections 53-5-704(2)(a) through (h).

R722-300-~~15~~14. Certificate of Qualification Instructors.

A. The Division will certify certificate of qualification instructors as provided for in Subsection 53-5-711(4)(c). An applicant for a certificate of qualification instructor shall:

1. be certified as a firearms instructor by Peace Officer Standards and Training;
2. make a written request to the Division for approval;

3. meet the good character requirements set forth in Subsections 53-5-704(2)(a) through(h); and

4. demonstrate to the satisfaction of the Division that their approval would provide a benefit to the training program.

B. The number of certificate of qualification instructors approved by the Division will be limited to the needs of the program.

R722-300-~~16~~15. Denial, Suspension, or Revocation of Approval as a Concealed Firearm Permit Instructor or Certificate of Qualification Instructor.

A. Approval as a concealed firearm permit instructor or certificate of qualification instructor may be denied, suspended or revoked for any of the following reasons:

1. failing to meet the requirements of Sections ~~[R724-4-14 or 15]~~R722-300-13 or 14;
2. failing to teach from an approved course of instruction;
3. failing to maintain records verifying that an applicant has passed a required course of instruction; or
4. knowingly and wilfully providing false information to the Division.

R722-300-~~17~~16. Records Access.

A. The purpose of this section is to define access to concealed firearm permit and certificate of qualification records in accordance with Title 63, Chapter 2, and Subsection 53-5-708(1).

B. Except as provided in Subsection 53-5-708(1), information supplied to the Division by an applicant shall be considered "private" in accordance with Subsection 63-2-302(2)(d).

C. Information gathered by the Division and placed in the applicant's file shall be considered "protected" in accordance with Subsections 63-2-304(8)and(9). However, if such information is used as the basis for denial of a concealed firearm permit or certificate of qualification, such information shall be considered "private" in accordance with Subsection 63-2-302(2)(d) and the applicant shall have access to it in accordance with Subsection 53-5-704(16)(c).

R722-300-~~18~~17. Adjudicative Procedures.

A. Any applicant denied a concealed firearm permit or certificate of qualification may request a hearing before the board by filing an appeal to the Division within 60 days from the date the notice of denial is issued. This appeal process also applies to a concealed firearm permit holder or certificate of qualification holder whose concealed firearm permit or certificate of qualification has been suspended or revoked.

B. Board hearings will be conducted informally in accordance with Section 63-46b-5.

C. Board decisions shall be issued within 30 days from the date of the hearing in accordance with Subsection ~~[53-5-70416(e)]~~53-5-704(16)(e) and shall comply with the requirements of Subsection 63-46b-5(1)(i).

D. In accordance with Section 63-46b-11 the board may enter a default order against any party who fails to participate in a hearing.

E. Judicial review of all final actions resulting from informal adjudicative proceedings is available pursuant to Section 63-46b-15.

F. Denial, suspension, or revocation of a temporary permit is not appealable to the board.

G. A concealed firearm permit instructor or certificate of qualification instructor has the same appeal rights as set forth in this section for concealed firearm permit holders and certificate of qualification holders.

KEY: concealed firearm permit
~~[April 16, 1998]~~2005
 Notice of Continuation January 28, 2003
 53-5-704
 63-46b

▼ ————— ▼

Tax Commission, Property Tax
R884-24P-53
 2005 Valuation Guides for Valuation of
 Land Subject to the Farmland
 Assessment Act Pursuant to Utah Code
 Ann. Section 59-2-515

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 28271
 FILED: 09/30/2005, 13:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment annually updates the agricultural use-values to be applied by county assessors to land qualifying for valuation and assessment under the Farmland Assessment Act (FAA). The values are recommended to the Commission by the State Farmland Evaluation Advisory Committee, which meets under the authority of Section 59-2-514.

SUMMARY OF THE RULE OR CHANGE: Section 59-2-215 authorizes the State Tax Commission to promulgate rules regarding the Property Tax Act, Part 5, "Farmland Assessment Act." Section 59-2-514 authorizes the State Tax Commission to receive valuation recommendations from the State Farmland Advisory Committee for implementation as outlined in Section R884-24P-53.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-215

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The amount of savings or cost to state government is undetermined. The state receives tax revenue for assessing and collecting and for the Uniform School Fund based on increased or decreased real and personal property valuation, including property assessed under the FAA (greenbelt). Property valuation (taxable value) changes have been recommended by class and by county. This year, 96 class/county valuations will increase, 90 will decrease, and 149 will remain unchanged. No total cost or savings could be calculated without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA assessment during 2006, and a listing of property no longer qualifying that is removed from greenbelt during 2006. However, it is estimated that the overall change is minimal due to this amendment.

❖ **LOCAL GOVERNMENTS:** The amount of savings or cost to local government is undetermined. Local governmental entities

receive tax revenue based on increased or decreased property valuation, including property on greenbelt. Property valuation changes have been recommended by class and by county. This year, 96 class/county valuations will increase, 90 will decrease, and 149 will remain unchanged. No total cost or savings could be calculated without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for greenbelt during 2006, and a listing of property no longer qualifying that is removed from greenbelt during 2006. However, it is estimated that the overall change is minimal due to this amendment. County assessor offices statewide will be required to input the new value indicators into their computer systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.

❖ **OTHER PERSONS:** Each property owner with property eligible for assessment under the FAA may see a change in value, depending on property class and situs county as 96 such value indicators will increase, 90 will decrease, and 149 will not change. The affect on the property owner will be valuation increase, decrease or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for greenbelt during 2006, and a listing of property no longer qualifying which is removed from greenbelt during 2006. In addition, the compliance cost will further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Undetermined. Each property owner with property eligible for assessment under the FAA may see a change in value, depending on property class and situs county as 96 such value indicators will increase, 90 will decrease, and 149 will not change. The affect on the property owner will be valuation increase, decrease or no change depending on the mix of property types and situs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact to businesses will vary depending on the county and the property classification. The impact is estimated to be minimal. Pam Hendrickson, Commission Chair

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

TAX COMMISSION
PROPERTY TAX
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Pam Hendrickson, Commission Chair

12) Salt Lake	[600] 590
13) Sanpete	[550] 540
14) Sevier	[575] 565
15) Summit	470
16) Tooele	[445] 440
17) Utah	[635] 625
18) Wasatch	[510] 500
19) Washington	[555] 550
20) Weber	670

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	[565] 540
2) Box Elder	[570] 550
3) Cache	[430] 425
4) Carbon	[300] 285
5) Davis	[565] 560
6) Duchesne	[340] 325
7) Emery	[280] 265
8) Garfield	[205] 200
9) Grand	[260] 255
10) Iron	[550] 545
11) Juab	[290] 285
12) Kane	[210] 205
13) Millard	540
14) Morgan	380
15) Piute	[350] 345
16) Rich	200
17) Salt Lake	[450] 440
18) San Juan	[190] 185
19) Sanpete	[400] 390
20) Sevier	[425] 415
21) Summit	320
22) Tooele	[295] 290
23) Uintah	370
24) Utah	[485] 475
25) Wasatch	[360] 350
26) Washington	[405] 400
27) Wayne	[355] 340
28) Weber	520

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-53. [2005]2006 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1) Box Elder	[820] 800
2) Cache	[680] 675
3) Carbon	[550] 535
4) Davis	[815] 810
5) Emery	[530] 515
6) Iron	[800] 795
7) Kane	[460] 455
8) Millard	790
9) Salt Lake	[700] 690
10) Utah	[735] 725
11) Washington	[655] 650
12) Weber	770

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	[720] 700
2) Cache	[580] 575
3) Carbon	[450] 435
4) Davis	[715] 710
5) Duchesne	[490] 475
6) Emery	[430] 415
7) Grand	[410] 405
8) Iron	[700] 695
9) Juab	[440] 435
10) Kane	[360] 355
11) Millard	690

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	[465] 440
2) Box Elder	[470] 450
3) Cache	[330] 325
4) Carbon	[200] 185
5) Daggett	[220] 215
6) Davis	[465] 460
7) Duchesne	[240] 225
8) Emery	[180] 165
9) Garfield	[105] 100
10) Grand	[160] 155
11) Iron	[450] 445
12) Juab	[190] 185
13) Kane	[110] 105
14) Millard	440
15) Morgan	280
16) Piute	[250] 245
17) Rich	100
18) Salt Lake	[350] 340
19) San Juan	[90] 85
20) Sanpete	[300] 290
21) Sevier	[325] 315
22) Summit	220
23) Tooele	[195] 190
24) Uintah	270

25) Utah	[385] 375
26) Wasatch	[260] 250
27) Washington	[305] 300
28) Wayne	[255] 240
29) Weber	420

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	[610] 620
2) Box Elder	665
3) Cache	[610] 620
4) Carbon	[610] 620
5) Davis	[655] 665
6) Duchesne	[610] 620
7) Emery	[610] 620
8) Garfield	[610] 620
9) Grand	[610] 620
10) Iron	[610] 620
11) Juab	[610] 620
12) Kane	[610] 620
13) Millard	[610] 620
14) Morgan	[610] 620
15) Piute	[610] 620
16) Salt Lake	[610] 620
17) San Juan	[610] 620
18) Sanpete	[610] 620
19) Sevier	[610] 620
20) Summit	[610] 620
21) Tooele	[610] 620
22) Uintah	[610] 620
23) Utah	[645] 660
24) Wasatch	[610] 620
25) Washington	[770] 750
26) Wayne	610
27) Weber	[655] 665

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	230
2) Box Elder	235
3) Cache	255
4) Carbon	[130] 125
5) Daggett	170
6) Davis	260
7) Duchesne	[160] 155
8) Emery	125
9) Garfield	95
10) Grand	[125] 120
11) Iron	225
12) Juab	145
13) Kane	[95] 100
14) Millard	190
15) Morgan	175
16) Piute	160
17) Rich	105
18) Salt Lake	225
19) Sanpete	190
20) Sevier	200
21) Summit	195
22) Tooele	175
23) Uintah	180
24) Utah	230
25) Wasatch	210
26) Washington	215
27) Wayne	160
28) Weber	285

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	40
2) Box Elder	[60] 50
3) Cache	55
4) Carbon	40
5) Davis	[45] 40
6) Duchesne	40
7) Garfield	40
8) Grand	40
9) Iron	40
10) Juab	40
11) Kane	40
12) Millard	40
13) Morgan	[45] 40
14) Rich	40
15) Salt Lake	40
16) San Juan	40
17) Sanpete	40
18) Summit	40
19) Tooele	40
20) Uintah	40
21) Utah	40
22) Washington	40
23) Weber	40

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	5
2) Box Elder	[25] 15
3) Cache	20
4) Carbon	5
5) Davis	[10] 5
6) Duchesne	5
7) Garfield	5
8) Grand	5
9) Iron	5
10) Juab	5
11) Kane	5
12) Millard	5
13) Morgan	[10] 5
14) Rich	5
15) Salt Lake	5
16) San Juan	5
17) Sanpete	5
18) Summit	5
19) Tooele	5
20) Uintah	5
21) Utah	5
22) Washington	5
23) Weber	5

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

a) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	[50] 68
2) Box Elder	[55] 60
3) Cache	[59] 65

4) Carbon	[64] 57	8) Emery	[11] 13
5) Daggett	[58] 68	9) Garfield	[13] 14
6) Davis	[57] 63	10) Grand	14
7) Duchesne	[68] 67	11) Iron	[11] 12
8) Emery	[59] 65	12) Juab	13
9) Garfield	[67] 73	13) Kane	15
10) Grand	[76] 70	14) Millard	[14] 15
11) Iron	[58] 60	15) Morgan	10
12) Juab	[67] 69	16) Piute	[13] 14
13) Kane	[77] 79	17) Rich	[12] 13
14) Millard	[73] 78	18) Salt Lake	[12] 14
15) Morgan	[52] 54	19) San Juan	[13] 14
16) Piute	[66] 72	20) Sanpete	13
17) Rich	[64] 65	21) Sevier	[13] 14
18) Salt Lake	[64] 72	22) Summit	[11] 12
19) San Juan	[66] 70	23) Tooele	[13] 14
20) Sanpete	[68] 69	24) Uintah	[12] 13
21) Sevier	[68] 70	25) Utah	[10] 11
22) Summit	[58] 68	26) Wasatch	10
23) Tooele	[68] 73	27) Washington	[10] 11
24) Uintah	65	28) Wayne	[14] 15
25) Utah	[50] 56	29) Weber	[11] 12
26) Wasatch	53		
27) Washington	[55] 56		
28) Wayne	[74] 79		
29) Weber	[60] 63		

d) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

b) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1) Beaver	[17] 19
2) Box Elder	[16] 18
3) Cache	[17] 19
4) Carbon	[18] 17
5) Daggett	[17] 20
6) Davis	[16] 19
7) Duchesne	20
8) Emery	[17] 19
9) Garfield	[19] 22
10) Grand	[22] 21
11) Iron	[17] 18
12) Juab	[19] 20
13) Kane	[22] 24
14) Millard	[21] 23
15) Morgan	[16] 16
16) Piute	[19] 22
17) Rich	[18] 20
18) Salt Lake	[18] 21
19) San Juan	[19] 21
20) Sanpete	[19] 21
21) Sevier	[19] 21
22) Summit	[17] 19
23) Tooele	[19] 22
24) Uintah	19
25) Utah	[14] 17
26) Wasatch	[15] 16
27) Washington	[16] 17
28) Wayne	[21] 23
29) Weber	[17] 19

TABLE 12
GR IV

1) Beaver	5
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	[5] 6
6) Davis	5
7) Duchesne	5
8) Emery	5
9) Garfield	5
10) Grand	[6] 5
11) Iron	5
12) Juab	5
13) Kane	6
14) Millard	6
15) Morgan	5
16) Piute	5
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	5
24) Uintah	5
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	6
29) Weber	5

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

a) Nonproductive Land	
1) All Counties	5

c) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1) Beaver	[11] 13
2) Box Elder	[10] 12
3) Cache	[11] 13
4) Carbon	[12] 11
5) Daggett	[11] 13
6) Davis	[11] 12
7) Duchesne	13

**KEY: taxation, personal property, property tax, appraisals
December 21, 2004
Notice of Continuation April 5, 2002
59-2-515**



NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN 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 CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends November 14, 2005. At its option, the agency may hold public hearings.

From the end of the waiting period through February 12, 2006, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

**Capitol Preservation Board (State),
Administration
R131-5
Board Review, Compensation and
Incentive Award Process**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27973
Filed: 09/26/2005, 13:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board received several public comments that suggested we reconsider some of the language and to make it compatible with the Department of Human Resource Management's (DHRM) Rules R477-6 and R477-10. The Board agreed and this change in proposed rule reflects those changes.

SUMMARY OF THE RULE OR CHANGE: Subsection R131-5-9 1(b) was changed to reflect DHRM's policy and procedures regarding compensation and incentive awards. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the June 15, 2005, issue of the Utah State Bulletin, on page 9. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-401

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Costs, when awarded, will be available from existing budgets.
- ❖ LOCAL GOVERNMENTS: The actions of the Capitol Preservation Board do not affect local government. Therefore, there is no anticipated cost or savings to local government.
- ❖ OTHER PERSONS: The actions of the Capitol Preservation Board do not affect other persons. Therefore, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The action of the Capitol Preservation Board does not affect compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The action of the Capitol Preservation Board does not affect businesses. David Hart, AIA, Executive Director

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
Room E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY UT 84114-2110, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sarah Whitney or David H. Hart at the above address, by phone at 801-538-3074 or 801-538-3074, by FAX at 801-538-3221 or 801-538-3221, or by Internet E-mail at swhitney@utah.gov or dhart@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: David H. Hart, AIA, Executive Director

R131. Capitol Preservation Board (State), Administration.

R131-5. Board Review, Compensation and Incentive Award Process.

R131-5-1. Purpose.

Pursuant to Section 63C-9-401, Utah Code, which provides ~~that~~ the Board shall appoint an executive director to assist them, this rule defines the ~~the~~ Board's review, compensation and bonus procedure for the executive director and staff.

R131-5-2. Authority.

This rule is authorized by Subsection 63C-9-301 and 63C-9-401, Utah Code, directing the Board to make rules to govern, administer and regulate the executive director and staff.

R131-5-3. Definitions.

- (1) "Board" or "CPB" means Capitol Preservation Board as provided for in Section 63-9-101, et seq., Utah Code.
- (2) DHRM means the Division of Human Resource Management within the Utah Department of Administrative Services.

R131-5-4. Authority of the Board.

(1) The ~~Capitol Preservation~~ Board is the authorizing agent to approve, by majority vote of members present, incentive and bonus awards, and compensation amount(s), ~~incentive and bonus awards~~ for staff as recommended by the ~~E~~ executive ~~D~~ director and the Budget Development and Board Operations Subcommittee ~~for staff~~.

(2) The Board shall be the sole approving authority, and shall sanction appropriate awards in accordance with these rules.

R131-5-5. Performance Review of Executive Director.

(1) The Board's Budget Development and Board Operations Subcommittee ~~[of the Board]~~ shall oversee a performance evaluation review of the ~~[E]executive [D]director~~ of the Board.

(2) This review shall be conducted by an appointed performance review panel of three members of the subcommittee and shall be comprised of one member from the executive branch, one from the house and one from the senate. The chair of the subcommittee shall designate members of the panel.

(3) Pursuant to Sections 63C-9-401 and 402, Utah Code, the panel shall review the work-plan as developed by the ~~[E]executive [D]director~~ and approved by the Board. The panel shall ~~[then]~~ meet with the ~~[E]executive [D]director~~ to review ~~[his]~~ the executive director's performance, to include the following:

- (a) day[-]-to[-]-day activities and functions of the office and staff under ~~[his]~~ the executive director's direction;
- (b) management and oversight of ongoing construction projects under ~~[his]~~ the executive director's direction;
- (c) fiduciary management of funds appropriated, earned or donated to the ~~[b]Board~~ for the management of the office, upkeep of ~~[e]Capitol [h]Hill~~, and restoration or construction of projects ~~[with in]within~~ the responsibilities of the Board;
- (d) personal and working relationships which have been developed with the members of the Board as well as groups associated with Capitol Hill;
- (e) other assignments, functions, or responsibilities ~~[that]~~ the panel finds a need to discuss.

~~[(2)](4)~~ The review shall take place in a timely manner, at least annually, and prior to ~~[the first of July]~~ July 1 of each year.

R131-5-6. Performance Review of Staff.

(1) The ~~[E]executive [D]director~~ shall define performance standards for each staff person under ~~[his]~~ the executive director's supervision, evaluate their performance, and make recommendations to the Budget Development and Board Operations ~~[Sub-Committee]~~ Subcommittee. The Board shall review the recommendations and ~~[pass as to]~~ give final approval.

(2) In accordance with ~~[rule]~~ Section R477-10, Utah Administrative Code, the ~~[E]executive [D]director~~ shall implement the following general performance methodology for each staff employee:

- (a) An employee performance plan shall be developed by August 30 of each fiscal year, or in the case of a new employee, within 60-days of the hiring-date, whichever is later;
- (b) Employees shall be provided with periodic verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.
- (c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(3) The ~~[E]executive [D]director~~ shall implement the following performance management rating system by August 30 to be effective for the fiscal year:

TABLE

Rating	Score
Exceptional	3
Highly Successful	2.5
Successful	2
Marginal	1
Unsuccessful	0

~~[— Exceptional = 3, Highly Successful = 2.5, Successful = 2, Marginal = 1, Unsuccessful = 0~~

(4) Each employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year. A new employee shall receive a performance evaluation at the end of a 6-month probationary period and again prior to the beginning of the first pay period of the fiscal year.

(5) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(6) The evaluation form shall include a space for the employee's comments. Each employee shall have the right to include written comment(s) to be placed in ~~[his/her]~~ the employee's file, to accompany the written performance evaluation as provided by the ~~[E]executive [D]director~~. The employee may comment in writing, either in the space provided or on separately attached pages.

R131-5-7. Performance Review and Compensation.

(1) Classification, evaluation, and compensation of the ~~[E]executive [D]director~~ and staff shall be consistent with DHRM policies and procedures. The ~~[E]executive [D]director~~ shall consult with DHRM to develop recommendations for staff job-descriptions and standards.

(2) Upon receipt of the ~~[E]executive [D]director's~~ recommendations for changes in master plans, work plans, compensation, bonuses or adjustments, the Budget Development and Board Operations Subcommittee shall present its recommendations to the Board no later than ~~[it's]~~ its regularly scheduled September meeting.

(3) Upon the Board's approval of the Budget Development and Board Operations Subcommittee's recommendations, the ~~[E]executive [D]director~~ will prepare a final "Budget/Planning Request" to be presented to the Governor and the Legislature.

R131-5-8. Incentive Awards for the CPB Staff.

(1) The Board's ~~[E]executive [D]director~~ shall follow the provisions of DHRM's policy when granting ~~[H]incentive and [B]bonus [A]awards~~, as contained in ~~[rule]~~ R477-6-5, Utah Administrative Code; and hereby adopts and incorporates it by reference within this rule.

(2) When the ~~[E]executive [D]director~~ has approved the issuance of an ~~[H]incentive or [B]bonus [A]award~~, and such action has been approved by the Board, the award shall be issued within 30-days.

R131-5-9. Incentive Awards for the Executive Director of the Board.

(1) Based on particular or unusual circumstances, the Board may approve and grant ~~[to]~~ the ~~[E]executive [D]director~~ incentive or bonus awards. Incentive and bonus awards are discretionary, without entitlement, and are subject to the availability of funds. The Board shall issue award(s) that accord with the following parameters:

(a) Awarded amounts may be paid either directly, or if requested by the executive [D]director, into a 401(k) program approved by the Utah Retirement System.

(b) ~~[An]~~ Individual awards ~~[for a single effort,]~~ shall not exceed \$4,000 per occurrence and \$8,000 [in a] per fiscal year.

(c) All cash incentive and bonus awards shall be subject to payroll taxes.

(2) Performance Based Incentive Award:

(a) Cash Incentive Award: The Board may grant a cash incentive award if:

(i) Exceptional effort or accomplishment is demonstrated, beyond normal job expectations over a sustained period of time.

(ii) A cash award approved by the Board shall be documented with a copy maintained in the ~~[E]~~executive ~~[D]~~director's employee file.

(b) Noncash Incentive Award: The Board may recognize its appreciation for the executive director's performance with noncash incentive awards.

(i) Individual noncash incentive awards shall not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(ii) Noncash incentive awards may not include cash equivalents such as gift certificates or tickets for admission.

(3) Cost-Savings Bonus: The Board may encourage increased productivity of the executive director when, through ~~[his]~~the executive director's action, cost savings are generated within a particular restoration or construction segment of the project,

(a) The Budget Development and Board Operations Subcommittee shall document the pertinent cost savings in their recommendation for the award.

(b) Amounts shall be for exceptional performance and circumstances, and may exceed limits stated in ~~[rule Sub-Section]~~ R477-6-5(1)(c), Utah Administrative Code, and R131-5-9-(b) when approved by the Board.

(4) Market Based Bonus:

The Board may extend a cash bonus to the executive director as an incentive for ~~[him]~~the executive director to obtain or retain an employee who possesses unusual job skills that are critical to the state and difficult to recruit in the marketplace.

(a) Retention Bonus:

The Board may pay a bonus to a current employee, to recognize usual or unique qualifications that are essential for the agency to retain.

(b) Recruitment or Signing Bonus:

The Board may pay a recruitment bonus to a qualified job candidate to convince the candidate to accept the position. ~~[being recruited for.]~~

(c) Scarce Skills Bonus:

The Board may pay a bonus to a qualified job candidate that has unusual and scarce skills which are essential for the job.

(d) Relocation Bonus:

The Board may pay a bonus to a current employee, or a new employee, for relocation, including relocation to a different commuting area.

(e) Referral Bonus:

The Board may pay a bonus to an employee who refers a job applicant who is subsequently selected and completes successful ~~[employed]~~employment for at least six months.

KEY: bonuses, reviews, compensation

2005

63C-9-401



Environmental Quality, Drinking Water R309-535 Facility Design and Operation: Miscellaneous Treatment Methods

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27965

Filed: 09/16/2005, 08:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are in response to comments received during the initial public comment period.

SUMMARY OF THE RULE OR CHANGE: The changes allow non-transient, non-community water systems to not provide proof of signed customer access agreements and service contracts where the water systems own the facilities served potable water. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the June 15, 2005, issue of the Utah State Bulletin, on page 49. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104; and Title XIV, Section 1419

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Environmental Protection Agency (EPA) estimates state costs for the arsenic rule to be \$1,000,000 annually. Using the percentage of Utah systems potentially affected, Utah's annual impact is approximately \$45,000 to \$50,000.

❖ LOCAL GOVERNMENTS: For the arsenic rule changes, costs will vary by water system size, sources utilized, and treatment applied. The EPA estimates the total national annual cost at \$180,000,000 for 2,387 community water systems. Utah has approximately 108 public water system potentially affected by this rule. The approximate annual cost of treatment to comply with this rule for Utah public water systems is \$8,144,000. Individual system cost will range from \$6,500 to \$1,340,000 annually. Allowing the use of point-of-use or point-of-entry technology for the smallest public water systems will significantly reduce the cost per service connection.

❖ OTHER PERSONS: Other persons that own and operate a public water system may have the same cost impact as listed under "local government" above. Costs to consumers will vary depending upon water system size, the EPA estimates the cost to vary from \$1 to \$327 per household per year.

Allowing the use of point-of-use or point-of-entry technology for the smallest public water systems will significantly reduce the cost per service connection.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for this aggregate rule change will vary depending upon the water system size, type of source, and type of treatment. The EPA estimates the cost to vary from \$1 to \$327 per household per year. The highest costs are associated with the very small public water systems where there are very few connections to spread the cost of treatment across. In these cases, these rule changes will also allow for point-of-use treatment technology and will reduce the cost significantly in some cases.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Patti Fauver or Ken Bousfield at the above address, by phone at 801-536-4196 or 801-536-4207, by FAX at 801-536-4211 or 801-536-4211, or by Internet E-mail at pfauver@utah.gov or kbousfield@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/14/2005

AUTHORIZED BY: Kevin Brown, Director

**R309. Environmental Quality, Drinking Water.
R309-535. Facility Design and Operation: Miscellaneous Treatment Methods.**

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R309-535-12. Point-of-Use and Point-of-Entry Treatment Devices.

Where drinking water does not meet the quality standards of R309-200 and the available water system treatment methods are determined to be unreasonably costly or otherwise undesirable, the Executive Secretary may permit the public water supplier to install and maintain point-of-use or point-of-entry treatment devices. This approval shall only be given after receipt and satisfactory review of the following items.

(1) The Executive Secretary shall only consider approving

point-of-use or point-of-entry treatment upon receipt of an analysis that clearly demonstrates that central treatment is not feasible for the public water system. Unless waived by the Executive Secretary, this analysis shall be in the form of an engineering report prepared by a professional engineer registered in the State of Utah. Systems serving fewer than 75 connections are excused from performing an analysis by a Registered Professional Engineer.

(2) The water system shall have a signed access agreement with each customer that allows water system personnel to enter their property on a scheduled basis to install and maintain the treatment devices. The agreement shall include educational information with regard to the health risks of consuming or cooking with water from non-treated taps. Systems with an initial 75% of their connections under a signed access agreement shall be allowed to proceed with the understanding that 100% of their connections are due within a 5 year period. For public water systems that own or control all connections to the public water system, this requirement will not apply.

(3) Documentation that legal authority, which includes a termination of service clause, has been adopted to ensure water system access to the property for installation, maintenance, servicing and sampling of each treatment unit. For public water systems that own or control all connections to the public water system, this requirement will not apply.

(4) Point-of-use or point-of-entry treatment devices used shall only be those proven to be appropriate, safe and effective as determined through testing and compliance with protocols established by EPA's Environmental Technology Verification Program (ETV) or the applicable ANSI/NSF Standard(s). A pilot study may be required to determine the suitability of the point-of-use or point-of-entry device in treating a particular source water. The scope and duration of the pilot study shall be determined by such factors as the characteristics of the raw water, manufacturer's ratings of the treatment device, and good engineering practices. The pilot study will generate data on service intervals, aid in specifying and calibrating alarm systems, and reveal any site specific problems with component fouling or microbial colonization.

(5) The water system shall provide an operation and maintenance plan demonstrating that the treatment units shall be installed and serviced in accordance with the manufacturer's instructions and that compliance sampling as required in R309-215-6 shall take place. The system shall provide documentation of an operation and maintenance contract or schedule annually as required in R309-105-16(4). If the operation and maintenance of the POU/POE devices is performed by water system personnel, it shall only be performed by a water operator certified at the level of the water system.

(6) The performance indicating device for the point-of-use/point-of-entry treatment device that will be used shall be specified in the submittal for plan approval.

(7) The water system shall submit a customer education and out-reach plan that includes at a minimum annual frequency of contact.

(8) Point-of-use or point-of-entry treatment devices for compliance with the nitrate MCL shall only be considered if treatment is provided at all taps that are accessible to the public.

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KEY: drinking water, miscellaneous treatment, stabilization, iron and manganese control

2005

Notice of Continuation September 16, 2002
19-4-104



Insurance, Administration
R590-85
Individual Accident and Health
Insurance and Individual and Group
Medicare Supplement Rates

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 28117
Filed: 09/30/2005, 08:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A change is being made due to comments received during the comment period.

SUMMARY OF THE RULE OR CHANGE: Instead of allowing for rate increases once every 12 months, the rule now allows for trend increases to be made more often and rate increases to be made only on the policy anniversary date. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the August 15, 2005, issue of the Utah State Bulletin, on page 18. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-201.1, 31A-22-605, and 31A-22-620

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The change made to this rule will have no fiscal impact on the state budget. The amendment will not change the work load or revenues of the department.
- ❖ LOCAL GOVERNMENTS: This rule only applies to the relationship between the Insurance Department and their licensees. It does not affect local government laws or procedures, therefore, there are no costs or savings.
- ❖ OTHER PERSONS: The change to this rule will not require a change in the insurer's workload or fees paid to the Insurance Department. It does make it possible for an insurer to change policyholder rates mid-term if trends in the marketplace change, for example, if medical costs increase or decrease. At that point, an insurer may file a rate change with the department midterm. This change in wording will allow insurers to pass along costs or savings to their insureds if they wish. What these costs or saving will be is unknown at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to this rule will not require a change in the insurer's workload or fees paid to the Insurance Department. It does make it possible for an insurer to change policyholder rates mid-term if trends in the marketplace change, for example, if medical costs increase or decrease. At that point, an insurer may file a rate change with the department midterm. This change in wording will allow insurers to pass along costs or savings to their insureds if they wish. What these costs or saving will be is unknown at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change to this rule will allow insurance companies to increase or decrease a policyholder's premium mid-term due to market trends affecting them. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@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 11/14/2005.

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2005

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-85. Individual Accident and Health Insurance and Individual and Group Medicare Supplement Rates.

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R590-85-4. General Requirements.

- (1) When Rate Filing is Required.
 - (a) Every filing for a policy, certificate or endorsement affecting benefits shall be accompanied by a rate filing that complies with this rule.
 - (b) A rate filing is not required for an endorsement that has no rating effect.
 - (c) Any subsequent addition to or change in rates applicable to the policy or endorsement shall also be filed prior to use.
- (2) General Contents of All Rate Filings. Each rate submission shall include:
 - (a) rate sheets for current and proposed rates, if applicable, that are clearly identified;

(b) actuarial memorandum describing the basis on which rates were determined, which includes:

(i) description of the policy, benefits, renewability, general marketing methods, and issue age limits;

(ii) description of how rates were determined, including a general description and source of each assumption used;

(iii) estimated average annual premium per policy for Utah;

(iv) anticipated loss ratio of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Interest shall be used in the calculation;

(v) minimum anticipated loss ratio presumed reasonable in R590-85-5(1); and

(vi) signed certification by a qualified actuary which states that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the state of Utah and the benefits are reasonable in relation to the premiums charged; and

(c) a statement that the rates have been filed with and approved by the home state. If approval is not required by the home state, then alternative information which includes a list of the states to which the rates were submitted, the date submitted, and any responses, must be included.

(3) Previously Filed Form. Filing a rate change for a previously filed rate shall include the following:

(a) a statement of the scope and reason for the change;

(b) a description of how revised rates were determined, including the general description and source of each assumption used;

(c) an estimated average annual premium per policy in Utah, before and after the proposed rate increase;

(d) a comparison of Utah and average nationwide premiums, for representative rating cells based on the Utah distribution of business;

(e) a comparison of revised premiums with current scale;

(f) a statement as to whether the filing applies to new business, in-force business, or both, and the reasons;

(g) a detailed history of national experience, which includes the data in Subsection 4(4) that shows on a yearly and durational basis:

(i) premiums received;

(ii) earned premiums;

(iii) benefits paid;

(iv) incurred benefits;

(v) increase in active life reserves;

(vi) increase in claim reserves;

(vii) incurred loss ratio;

(viii) cumulative loss ratio; and

(ix) any other available data the insurer may wish to provide;

(h) detailed history of Utah experience, which includes the data in Subsection 4(4) that shows on a yearly basis:

(i) earned premiums;

(ii) incurred benefits;

(iii) incurred loss ratio; and

(iv) cumulative loss ratio;

(i) anticipated nationwide future loss ratio, which includes:

(i) projected premiums;

(ii) projected claims; and

(iii) projected loss ratio; and

(iv) assumptions and calculations. Interest shall be used in the calculation;

(j) anticipated Utah future loss ratio, which includes:

(i) projected premiums;

(ii) projected claims; and

(iii) projected loss ratio; and

(iv) description of assumptions and calculations. Interest shall be used in the calculation;

(k) cumulative past and projected future loss ratio and description of the calculation;

(l) the number of policyholders residing in the state of Utah; and

(m) the date and magnitude of all previous rate changes.

(4) Experience Records

(a) An insurer shall maintain records of premiums collected, earned premiums, benefits paid, incurred benefits and reserves for each calendar year, for each policy form, and applicable endorsements. The records shall be maintained as required for the Accident and Health Policy Experience Exhibit.

(i) Separate data may be maintained for each endorsement to the extent appropriate.

(ii) Experience under policies that provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued.

(b) A rate revision must provide the information required in Subsection (4)(a) on both a national and state basis.

(5) Evaluating Experience Data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

(a) statistical credibility of premiums and benefits, for example low exposure or low loss frequency;

(b) experience and projected trends relative to the kind of coverage, for example: persistency, inflation in medical expenses, or economic cycles affecting disability income experience;

(c) concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations; and

(d) the mix of business by risk classification.

(6) ~~[A rate increase may only be requested once every 12 months]~~ Except for a filed trend increase, a rate may only be increased on the policy anniversary.

(7) Implementation of a filed rate increase must be initiated within 12 months from the filed date. A company forfeits the right to implement an increase if they fail to initiate implementation within 12 months of the filed date.

(8) A filing may be rejected or prohibited if the company fails to submit all required information.

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KEY: insurance law

2005

Notice of Continuation April 24, 2002

31A-2-201

31A-22-605

31A-22-620

▼ ————— ▼

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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).

Administrative Services, Administrative Rules **R15-1** Administrative Rule Hearings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 28261
FILED: 09/29/2005, 17:17

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: Subsections 63-46a-10(1)(a) and 63-46a-10(1)(m) require the Division to establish all hearing procedures necessary to make rules under the Utah Administrative Rulemaking Act, to administer the Act, and to require agency compliance with hearing procedures.

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 written comments have been received since the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 63-46a-5 establishes state policy governing rulemaking hearings. The provisions of Rule R15-1 are mandated by Subsections 63-46a-10(1)(a) and 63-46a-10(1)(m). Rule R15-1 provides procedures governing mandatory rulemaking hearings. Hearings are mandatory when a specific provision of law requires a hearing or when no fewer than ten persons or an organization with no fewer than 10 members requests that the agency to hold a hearing within 15 days of the rules publication. Rulemaking hearings can provide meaningful opportunities for citizens to learn about, become involved with, and influence administrative policy making. This is demonstrated to some extent by the fact that agencies file Changes in Proposed Rules on 8% of the Proposed Rules filed during fiscal year 2005. An agency usually files a

Change in Proposed Rule in response to comments received from persons through hearings and other sources. Comments made by persons at rulemaking hearings become part of the administrative record in which an agency justifies its regulatory decisions. This rule is necessary and should be continued to provide consistent guidelines for mandatory rulemaking hearings.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth A. Hansen, Director

EFFECTIVE: 09/29/2005



Administrative Services, Administrative Rules **R15-2** Public Petitioning for Rulemaking

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 28262
FILED: 09/29/2005, 17:18

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: Subsection 63-46a-12(2) requires the Division to promulgate administrative rules governing rulemaking petitions and to prescribe the form for petitions made under Section 63-46a-12.

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 written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 63-46a-12 permits interested persons to petition an agency to enact, amend, or repeal a rule. Subsection 63-46a-12(2) mandates that the Division "prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition." Rule R15-2 establishes petitioning procedures and requires petitioners to provide specific information. Rule R15-2 also establishes procedures governing agency consideration and disposition of rulemaking petitions. Therefore, this rule should be continued. Rulemaking petitions provide citizens an important opportunity to directly influence the content of agency rules. Subsection 63-46a-12(4) requires an agency to respond to a rulemaking petition within 30 days from a petition's receipt. A rulemaking petition also constitutes the administrative remedy which, with few exceptions, must be exhausted before a person may ask the court for relief as provided in Section 63-46a-12.1.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth A. Hansen, Director

EFFECTIVE: 09/29/2005



**Administrative Services, Administrative
Rules
R15-3
Definitional Clarification of
Administrative Rule**

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

DAR FILE No.: 28264
FILED: 09/29/2005, 17:19

**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: Subsection 63-46a-10(1) requires the Division to administer the Utah Administrative Rulemaking Act, Title 63, Chapter 46a, and to require state agencies to comply with filing, publication, and hearing procedures. Subsection 63-46a-4(2) requires agencies to comply with rules made by the division to implement the Act.

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 written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R15-3 clarifies the role of rules in limiting agency discretion pursuant to Subsection 63-46a-3(8); provides standards for an agency to follow when making amendments to materials it incorporates by reference into its rules pursuant to Subsection 63-46a-3(7); requires an agency to provide a summary of materials incorporated by reference as part of the rule analysis summary; requires an agency to comply with copyright laws when providing the Division a copy of materials incorporated by reference pursuant to Subsection 63-46a-3(7)(d); and limits the type of material that may be included in rule, consistent with Subsection 63-46a-4(7)(a)(iv). This rule provides necessary clarification to the statute. It ensures that materials incorporated by reference are available. It keeps publication expenses at a more reasonable level. It helps facilitate the broad distribution of rule text. Therefore, this rule should be continued. Clear, consistent administrative rules increase the likelihood of compliance by both members of the public and the agency.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth A. Hansen, Director

EFFECTIVE: 09/29/2005



**Administrative Services, Administrative
Rules
R15-4
Administrative Rulemaking Procedures**

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

DAR FILE NO.: 28265
FILED: 09/29/2005, 17:20

**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: Subsection 63-46a-10(1) requires the Division to administer the Utah Administrative Rulemaking Act, Title 63, Chapter 46a; to establish all filing, publication, and hearing procedures necessary to make rules; and to require state agencies to comply with filing, publication, and hearing procedures. Subsection 63-46a-4(2) requires agencies to comply with rules made by the Division to implement the Act.

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 written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R15-4 establishes publication dates for the Utah State Bulletin and Utah State Digest pursuant to Subsections 63-46a-10(1)(d) and 63-46a-10(1)(f); establishes filing and publication deadlines; clarifies how the 30-day comment period is calculated; clarifies filing requirements for notices of effective date, nonsubstantive changes, changes in proposed rules, and 120-day (emergency) rules; clarifies how rule text is to be marked to show changes; and provides that changes not correctly marked may or may not, at the discretion of the director or his designee, be codified. This rule is necessary and should be continued because it ensures the statutory minimum level of public access to agency rules; it helps ensure consistent application of rulemaking procedures across state agencies; and it establishes the Division's rule filing standards so that a state agency can know what to expect when it engages in rulemaking.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kenneth A. Hansen at the above address, by phone at 801-

538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth A. Hansen, Director

EFFECTIVE: 09/29/2005



**Administrative Services, Administrative
Rules
R15-5
Administrative Rules Adjudicative
Proceedings**

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

DAR FILE NO.: 28266
FILED: 09/29/2005, 17:20

**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 63-46b-4 and 63-46b-5 permit an agency to designate adjudicative proceedings as informal. If the agency chooses to do so, it must do so by rule. Section 63-46b-21 requires each agency to issue rules that govern procedures for declaratory orders. Subsection 63-46a-10(1)(m) requires the division to administer the Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

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 written comments have been received since this rule was last reviewed.

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 and should be continued for the Division to conduct adjudications informally. Without this rule, the Division would be required to follow the costly formal adjudication procedures outlined in the Administrative Procedures Act, Title 63, Chapter 46b, when an adjudication is required. Formal procedures would also impose unnecessary costs on persons affected by a rule. Informal procedures allow the Division to respond to citizens' concerns at the lowest cost to the state and the affected persons. The Division has received no comments in opposition to the rule.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth A. Hansen, Director

EFFECTIVE: 09/29/2005



Insurance, Administration
R590-130
Rules Governing Advertisements of
Insurance

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE NO.: 28260
 FILED: 09/29/2005, 16:47

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: Subsection 31A-2-201(3) allows the commissioner to make rules to implement the provisions of the insurance code. Section 31A-23-302, which has been renumbered to Section 31A-23a-402, authorizes the commissioner to define unfair or deceptive acts or practices in the business of insurance. This rule sets advertising guidelines to assure clear and truthful disclosure of the benefits, limitations, and exclusions of policies sold as insurance. The rule limits the form and content of advertisements; limits the use of deceptive word, phrases and illustrations; provides guidelines for the use of exceptions, reductions and limitations used in rules; requires disclosure of

policy provisions dealing with renewals, cancellations and terminations; requires disclosure of the identity of the insurer; and procedures for enforcement by the Insurance Department in regards to this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments for or against this rule in 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: This rule is still needed because licensees are still using misleading and deceptive information and advertising in the sale of insurance. Therefore, this rule should be continued.

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

INSURANCE
 ADMINISTRATION
 Room 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/29/2005



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

NOTICES OF RULE EFFECTIVE DATES

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.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal and Reenact

REP = Repeal

Commerce

Occupational and Professional Licensing

No. 28124 (AMD): R156-31c-201. Issuing a License.

Published: August 15, 2005

Effective: September 19, 2005

Real Estate

No. 28031 (AMD): R162-105. Scope of Authority.

Published: July 1, 2005

Effective: September 29, 2005

No. 28030 (AMD): R162-106. Professional Conduct.

Published: July 1, 2005

Effective: September 29, 2005

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 28106 (AMD): R414-1. Utah Medicaid Program.

Published: August 15, 2005

Effective: September 26, 2005

No. 27977 (AMD): R414-200-3. Services Available.

Published: July 1, 2005

Effective: October 1, 2005

Health Systems Improvement, Emergency Medical Services

No. 28121 (AMD): R426-5. Hospital Trauma Categorization Standards.

Published: August 15, 2005

Effective: September 21, 2005

Human Services

Services for People with Disabilities

No. 28036 (REP): R539-7. Home Based Services.

Published: July 15, 2005

Effective: September 16, 2005

Insurance

Administration

No. 28099 (REP): R590-145. Accelerated Benefits Rule.

Published: August 15, 2005

Effective: September 30, 2005

No. 28098 (AMD): R590-148-21. Loss Ratio.

Published: August 15, 2005

Effective: September 30, 2005

No. 27845 (AMD): R590-172-4. Rule.

Published: May 15, 2005

Effective: September 30, 2005

No. 27845 (CPR): R590-172-4. Rule.

Published: August 15, 2005

Effective: September 30, 2005

No. 28110 (REP): R590-202. Condition-Specific Exclusion Riders in Individual Health Insurance Policies.

Published: August 15, 2005

Effective: September 30, 2005

Title and Escrow Commission

No. 28105 (NEW): R592-1. Title Insurance Licensing.

Published: August 15, 2005

Effective: September 30, 2005

No. 28107 (NEW): R592-2. Title Insurance Administrative Hearings and Penalty Imposition.

Published: August 15, 2005

Effective: September 30, 2005

Workforce Services

Workforce Information and Payment Services

No. 27919 (AMD): R994-307-101. Relief of Charges to Contributing Employers.

Published: June 1, 2005

Effective: September 29, 2005

No. 27921 (AMD): R994-309-105. Reimbursable Employer's Liability for Benefits Paid.

Published: June 1, 2005

Effective: September 29, 2005

No. 27922 (AMD): R994-311. Governmental Units.

Published: June 1, 2005

Effective: September 29, 2005

No. 27924 (AMD): R994-401. Payment of Benefits.

Published: June 1, 2005

Effective: September 29, 2005

No. 27937 (AMD): R994-403-123. Obligation of Department Employees.

Published: June 15, 2005

Effective: September 29, 2005

NOTICES OF RULE EFFECTIVE DATES

No. 27926 (AMD): R994-404-101. Claimants Who Qualify for an Adjustment to the Base Period.
Published: June 1, 2005
Effective: September 29, 2005

No. 27927 (AMD): R994-405. Ineligibility for Benefits.
Published: June 1, 2005
Effective: September 29, 2005

No. 27928 (AMD): R994-406. Fraud and Fault.
Published: June 1, 2005
Effective: September 29, 2005

No. 27936 (AMD): R994-508-109. Hearing Procedure.
Published: June 15, 2005
Effective: September 29, 2005

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, 2005, including notices of effective date received through September 30, 2005, the effective dates of which are no later than October 15, 2005. 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).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

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/>).

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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	5YR = Five-Year Review
EXD = Expired	

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R628-15	Certification as an Investment Adviser	27743	NEW	05/05/2005	2005-7/60

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R649-2	General Rules	28068	NSC	08/01/2005	Not Printed
R649-3	Drilling and Operating Practices	28073	NSC	08/01/2005	Not Printed
R649-5	Underground Injection Control of Recovery Operations and Class II Injection Wells	28069	NSC	08/01/2005	Not Printed
R649-6	Gas Processing and Waste Crude Oil Treatment	28070	NSC	08/01/2005	Not Printed
R649-8	Reporting and Report Forms	28071	NSC	08/01/2005	Not Printed
R649-9	Waste Management and Disposal	28072	NSC	08/01/2005	Not Printed
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R651-205-7	Palisade Lake	27559	AMD	01/15/2005	2004-24/29
R651-205-9	Jordan River	28056	AMD	08/16/2005	2005-14/57
R651-206	Carrying Passengers for Hire	27561	AMD	01/15/2005	2004-24/29
R651-206	Carrying Passengers for Hire	27664	NSC	02/01/2005	Not Printed
R651-209	Registration Expiration	27562	REP	01/15/2005	2004-24/32
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R651-215	Personal Flotation Devices	27565	AMD	01/15/2005	2004-24/35
R651-223	Vessel Accident Reporting	28092	5YR	07/14/2005	2005-15/48
R651-401	Off-Highway Vehicle and Registration Stickers	27566	AMD	01/15/2005	2004-24/37
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R651-634-1	User Fees	27920	NSC	06/01/2005	Not Printed
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R655-4	Water Well Drillers	27691	5YR	02/01/2005	2005-4/55
R655-4	Water Well Drillers	27475	NSC	02/01/2005	Not Printed
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R657-6	Taking Upland Game	28081	AMD	09/06/2005	2005-15/7
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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	5YR = Five-Year Review
EXD = Expired	

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	27569	R70-540-14	AMD	03/18/2005	2004-24/7
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