

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-538-1773. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for November 2009 Medicaid Rate Changes

Effective November 1, 2009, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

EXECUTIVE DOCUMENTS

As part of his or her constitutional duties, the Governor periodically issues **EXECUTIVE DOCUMENTS** comprised of Executive Orders, Proclamations, and Declarations. "Executive Orders" set policy for the Executive Branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. "Proclamations" call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. "Declarations" designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution. All orders issued by the Governor not in conflict with existing laws have the full force and effect of law during a state of emergency when a copy of the order is filed with the Division of Administrative Rules. (See Section 63K-4-401).

Governor's Executive Order 2009/001/EO: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

WHEREAS, 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, Gary R. Herbert, 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 September 10, 2009 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of September 2009.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

2009/001/EO

Governor's Executive Order 2009/002/EO: Lieutenant Governor's State Bonding Commission Powers

EXECUTIVE ORDER

Lieutenant Governor's State Bonding Commission Powers

I, GARY R. HERBERT, GOVERNOR OF THE STATE OF UTAH, AUTHORIZE Lieutenant Governor Greg Bell to sign State Bonding Commission documents for me, vote on my behalf as a member of the Commission, and act in all other respects as my agent and proxy on the Commission until January 3, 2011. The State Bonding Commission is created by Section 63B-1-201, Utah Code Annotated 1953, as amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 15th day of September, 2009.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

2009/002/EO

Governor's Executive Order 2009/003/EO: Lieutenant Governor's State Building Ownership Authority Powers**EXECUTIVE ORDER**

Lieutenant Governor's State Building Ownership Authority Powers

I, GARY R. HERBERT, GOVERNOR OF THE STATE OF UTAH, AUTHORIZE Lieutenant Governor Greg Bell to sign State Building Ownership Authority documents for me, vote on my behalf as a member of the Authority, and act in all other respects as my agent and proxy on the authority until January 3, 2011. The State Building Ownership Authority is created by Section 63B-1-304, Utah Code Annotated 1953, as amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 15th day of September, 2009.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

2009/003/EO

Governor's Proclamation: Calling the Fifty-Eighth Legislature into the Fourth Extraordinary Session

P R O C L A M A T I O N

WHEREAS, since the close of the 2009 General Session of the 58th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the Fourth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 16th day of September, 2009, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2009 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 3rd day of September, 2009.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2009/4/E

Governor's Declaration of Agricultural Disaster

DECLARATION OF AGRICULTURAL DISASTER

Whereas, the catastrophic canal failure in Cache County resulted in the loss of lives and the victims families and we as a state are mourning;

Whereas, a major public safety issue and economic hardship for the citizens and farmers of the area need to be addressed;

Whereas, the economic hardship that has been placed on the farmers who are served by the canal is significant. The temporary irrigation supply actions taken with the help of some timely rains have helped mitigate the impacts on this growing season;

Whereas, it is a high priority to the local citizens to protect the local economy of food production and the desire of the state to maintain sustainable farming in the State of Utah;

Whereas, the agriculture community is facing tough economic challenges, and this disaster weighs heavily on the farmers impacted;

Whereas, the importance of replacing the current canal system is essential for both the public safety and making irrigation water available for future crop production is extremely important;

Whereas, the State of Utah desires to access federal funds that may be available for assistance in the restoration of this important infrastructure.

NOW THEREFORE, I, Gary R. Herbert, 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 declare an "Agricultural Disaster" for Cache County, due to the aforesaid canal failure in the State of Utah.

IN TESTIMONY, WHEREOF I have hereunto set my hand and caused affixed the Great Seal of the State of Utah, this 11th, day of September, 2009.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lt. Governor

End of the Executive Documents 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, 2009, 12:00 a.m., and October 01, 2009, 11:59 p.m. are included in this, the October 15, 2009 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 between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. 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 16, 2009. The agency may accept comment beyond this date and will indicate 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 hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "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, 2010, 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 seven calendar days after the close of the public comment period 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 OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** 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 Section 63G-3-301; 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, Real Estate
R162-6-1
 Improper Practices

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 33003
 FILED: 09/29/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Real Estate Commission considers that it is overly restrictive to limit the value of a token gift to \$50 and that the limit needs to be increased to \$150.

SUMMARY OF THE RULE OR CHANGE: This change increases the value limit for a token gift from \$50 to \$150.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(viii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Token gifts given by licensees to people who provide unsolicited leads that result in closings have no effect on the state budget.
- ◆ **LOCAL GOVERNMENTS:** Token gifts given by licensees to people who provide unsolicited leads that result in closings have no effect on budgets or resources of local governments.
- ◆ **SMALL BUSINESSES:** Small businesses that choose to give token gifts may expend more under this amendment than they were able to expend previously. However, they are not required to do so. Therefore, there are no unavoidable costs to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Under this amendment, affected persons may expend more for token gifts than they were previously able to. However, they are not required to do so. Therefore, there are no unavoidable costs to affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons must limit an expenditure for a token gift to \$150. There are no associated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is foreseen from this rule filing, which increases the permissible value of voluntary token gifts.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

6.1.1. False Devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, lease or rent any real property as a principal, without first disclosing in writing on the purchase agreement or the lease or rental agreement the licensee's true position as principal in the transaction. For the purposes of this rule, a licensee will be considered to be a "principal in the transaction" if the licensee: a) is the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee.

6.1.3.1. Disclosure of Licensed Status. Regardless of whether a person's license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license.

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2. If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6. If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9. If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees may not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know

of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional Conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on the licensee's own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token Gifts. A licensee may give a gift valued at \$[50]150 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referrals and Provision of Settlement Services.

6.1.10.1. Referrals of Prospects to Lender or Mortgage Broker. A licensee may not receive a referral fee from a lender or a mortgage broker.

6.1.10.2. Providing Settlement Services. A licensee may not act as a real estate agent or broker in the same transaction in which the licensee also acts as a mortgage loan officer or loan originator, appraiser, escrow agent, or provider of title services.

6.1.11. Failure to Have Written Agency Agreement. A principal broker and a licensee acting on the principal broker's behalf shall have written agency agreements with their principals.

6.1.11.1. A principal broker and a licensee acting on the principal broker's behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and a licensee acting on the principal broker's behalf who represent a buyer shall have a written agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and a licensee acting on the principal broker's behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.15.3.1.

6.1.11.3.1. A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and a licensee acting on the principal broker's behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and a licensee acting on the principal broker's behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

6.1.12. Signing without legal authority. A licensee shall not sign or initial any document for a principal unless the licensee has prior written authorization in the form of a duly executed power of attorney from the principal authorizing the licensee to sign or initial documents for the principal. A copy of the power of attorney shall be attached to all documents signed or initialed for the principal by the licensee.

6.1.12.1. When signing a document for a principal, the licensee shall sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact."

6.1.12.2. When initialing a document for a principal, the licensee shall initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name)."

6.1.13. Counteroffers. A licensee shall not make a counteroffer by making changes, whiting out, or otherwise altering the provisions of the Real Estate Purchase Contract or the language that has been filled in on the blanks of the Real Estate Purchase Contract. All counteroffers to a Real Estate Purchase Contract shall be made using the State-Approved Addendum form.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: [March 2], 2009

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 61-2-5.5

Commerce, Securities

R164-4-9

Exemptions From Licensing Requirements for Certain Investment Advisers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33006

FILED: 09/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule codifies exemptions from the licensing requirements for certain investment advisers who meet the criteria set forth in the rule.

SUMMARY OF THE RULE OR CHANGE: The rule codifies exemptions from the licensing requirements for certain investment advisers who meet the criteria set forth in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24 and Section 61-1-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No additional costs or savings to the state budget are anticipated, as the rule creates several exemptions from licensing for investment advisers engaged in certain activities. Any change in revenue will be nominal because most of the affected entities are not currently licensed with the Division and therefore are not currently paying licensing fees.

◆ **LOCAL GOVERNMENTS:** None--The rule codifies exemptions from licensing for investment advisers engaged in certain activities for which licensing as an investment adviser is not required. Local government is not affected because it does not regulate investment advisers.

◆ **SMALL BUSINESSES:** An investment adviser that meets an exemption under the rule will save the costs associated with licensing with the Division, currently \$100 annually for an investment adviser and \$50 per investment adviser representative.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** An investment adviser that meets an exemption under the rule will save the costs associated with licensing with the Division, which are currently \$100 annually for an investment adviser and \$50 annually per investment adviser representative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Exemptions set forth under the rule may result in savings to affected persons as described above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule may save businesses that meet the specified criteria the costs of licensing with the Division, but will otherwise have no fiscal impact to businesses.

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

COMMERCE
SECURITIES
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:

◆ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
◆ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

R164-4. Licensing Requirements.

R164-4-9. Exemptions From Licensing Requirements for Certain Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than \$10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities; or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).

(C) Exemption for Investment Advice to Certain Institutional Investors

(1) Notwithstanding the provisions of Subsection 61-1-3(3), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act

if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than \$10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) Notwithstanding the provisions of Subsection 61-1-3(3), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) Notwithstanding the provisions of Subsection 61-1-3(3), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment

adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the Entity

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(I) No Licensing Exemption for Advisory Services to Natural Persons

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

KEY: securities, securities regulation, investment advisers, securities licensing requirements

Date of Enactment or Last Substantive Amendment: ~~October 16, 2002~~ 2009

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-3; 61-1-4; 61-1-5; 61-1-6; 61-1-13; 61-1-14; 61-1-24

Commerce, Securities R164-9 Registration by Coordination

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33010

FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements changes necessitated by the passage of H.B. 78 in the 2009 General Session. (DAR NOTE: H.B. 78 (2009) is found at Chapter 351, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: H.B. 78 extended the waiting period for the effectiveness of a Registration by Coordination to 20 days from 10 days (see Subsection 61-1-9(3)(b)). This amendment updates all applicable references to reflect the new effectiveness period.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-9

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No additional costs or savings to the state budget are anticipated. Extension of the automatic effectiveness period for Registrations by Coordination will not necessitate the dedication of any additional state personnel or other resources.
- ◆ **LOCAL GOVERNMENTS:** None--Local government entities do not engage in any regulation in the area of securities registrations.
- ◆ **SMALL BUSINESSES:** No additional costs will be incurred by small business. Substantive filing requirements will remain unchanged under this amendment. Only the automatic effectiveness period will change.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No additional costs will be incurred by these entities. Substantive filing requirements will remain unchanged under this amendment. Only the automatic effectiveness period will change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No increase in compliance costs. Filing fees for the applicable registrations remain unchanged.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The implementation of this amendment will not result in an increase in compliance costs for businesses. All filing requirements relating to the submission of documents and filing fees will remain unchanged.

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

COMMERCE
SECURITIES
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:

- ◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.**R164-9. Registration by Coordination.****R164-9-1. Registration by Coordination.**

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9, 61-1-11 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by coordination in Utah. Any security for which a registration statement under the Securities Act of 1933 or a notification under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), has been filed with the SEC in connection with the same offering may be registered by coordination under Section 61-1-9.

(3) The rule also authorizes optional electronic filing of registration statements and allows an optional modification of the term of effectiveness to facilitate simultaneous electronic filing.

(4) Offerings which are registered, as opposed to being exempt from registration, in less than 20 states, including the state of Utah, are subject to the requirements of Section R164-11-1. Failure to comply with the requirements of Section R164-11-1 may be grounds for denial, suspension or revocation of effectiveness of a registration statement filed under Section 61-1-9.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "Registration Statement" means the registration statement filed under the Securities Act of 1933 or the notification filed under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994).

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "SRD" means the Securities Registration Depository, Inc.

(C) Registration requirements

(1) An issuer may register securities by submitting to the Division or its designee the following:

(1)(a) One original application on NASAA Form U-1 - Uniform Application to Register Securities;

(1)(b) One copy of the registration statement, including exhibits, together with all amendments as filed with the SEC under the Securities Act of 1933 or SEC Regulation A;

(1)(c) One original NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) A fee as specified in the Division's fee schedule; and

(1)(e) Any additional documents or information which the Division requests.

(2) No document or application shall be deemed to be filed, and the ~~ten~~20 working day period referred to in Subsection 61-1-9(3)(b) shall not begin, until all items required by Subparagraph (C)(1) have been received by the Division or its designee.

(3) Where the Division notifies the registrant in writing of any missing or incomplete documents or information, or other deficiencies in the registration statement, registrant must respond promptly. If the registrant does not respond to the Division in writing within 30 calendar days of the mailing date of the Division's letter, the registration statement will be deemed incomplete and action may be taken to deny the effectiveness of the registration statement, and to impose a fine.

(D) Additional notification to the Division

The registrant shall notify the Division within two business days upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public.

(E) Effective date

(1) The registration statement becomes effective as set forth in Subsection 61-1-9(3).

(2) The registration statement is effective for one year from its effective date with the Division.

(3) A registration statement which does not become effective within one year from the filing date may be deemed materially incomplete and action may be taken to deny effectiveness to the registration statement.

(4) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(F) Post effective amendments

A registration statement may be amended by filing with the Division or its designee an amended NASAA Form U-1 - Uniform Application to Register Securities, and an amended registration statement. The amendment becomes effective when the Division so orders.

(G) Re-registration

The registrant may re-register securities, for which a registration statement is about to expire, by submitting to the Division or its designee, a NASAA Form U-1, an updated registration statement and the filing fee specified in the Division's fee schedule.

(H) Closing report

Within 30 days of the close of the offering or the expiration of the registration statement, whichever occurs first, the registrant shall file a closing report. The closing report must be filed on Division Form 9-1.

(I) Recognized designee

(1) The Division authorizes and recognizes the SRD as designee to receive filings under this rule on behalf of the Division, including but not limited to applications, registration statements and fees.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then

transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

R164-9-3b. MJDS - Review Period.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-9(6) and Section 61-1-24.

(2) This rule provides a shorter review period for registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under its multijurisdictional disclosure system.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Review period

(1) The ~~ten-working~~20 working day disclosure statement filing requirement set forth in Subsection 61-1-9(3)(b) shall be reduced to seven working days for a registration statement filed with the Division and with the SEC under MJDS on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC.

KEY: securities, securities regulation

Date of Enactment or Last Substantive Amendment: ~~July 3, 1997~~2009

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-9; 61-1-11; 61-1-24

Commerce, Securities **R164-10-2** Registration Statements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33011

FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment updates relevant references to reflect the reorganization and name change of the National Association of Securities Brokers to the Financial Industry Regulatory Authority.

SUMMARY OF THE RULE OR CHANGE: This amendment modifies Subsections R164-10-2(K)(3)(a) and (b) of the rule to update the acronym "NASD" to "FINRA".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-10 and Section 61-1-11 and Section 61-1-24

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No additional costs or savings. The Amendment merely updates a reference to the name of an outside self-regulatory entity.
- ◆ LOCAL GOVERNMENTS: No effect--Local government entities do not engage in any regulation in the area of securities registrations.
- ◆ SMALL BUSINESSES: No additional costs or savings. The amendment merely updates a reference to the name of an outside self-regulatory entity.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No additional costs or savings. The amendment merely updates a reference to the name of an outside self-regulatory entity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs or savings. The amendment merely updates a reference to the name of an outside self-regulatory entity.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is a housekeeping matter designed to make sure that our rules accurately reference the names of all relevant entities. No fiscal impact on business is anticipated.

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

COMMERCE
 SECURITIES
 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:

- ◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.
R164-10. Registration by Qualification.
R164-10-2. Registration Statements.

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(K) Selling documents

The registration statement must contain the following documents with respect to the persons who propose to offer or sell the securities pursuant to the registration statement:

(1) Where the securities are to be offered through a licensed agent or broker-dealer, one copy of the signed agreement between the agent OR broker-dealer and the issuer setting forth the compensation each person will receive in connection with such distribution, and a description of any transactions between such person and the issuer within the twelve months preceding the filing of the registration statement.

(2) Where the securities are to be offered through any person not licensed with the Division as a broker-dealer or agent, the broker-dealer or agent application and supporting documents and information, as required in Section R164-4-1, for such person must accompany the registration statement at the time of the original filing.

(3) No registration statement shall become effective where

(3)(a) the only person participating in the distribution is a broker-dealer which is a member of ~~the NASD~~FINRA, and

(3)(b) the Division has not received written confirmation or oral confirmation to be followed by written confirmation that ~~the NASD~~FINRA has no objection to the compensation arrangements set forth in the registration statement.

(4) No registration statement shall be effective or become effective without complete compliance with Section R164-4-1 by at least one person participating in the distribution.

(L) Consent of expert

(1) Where any information provided by an expert is used in the registration statement or prospectus, the registration statement must include the consent of the expert to the specific use of the information in the prospectus or registration statement.

(2) Where the name of an expert is used in the registration statement or prospectus, the registration statement or prospectus must contain the consent of the expert as to the specific use of the expert's name.

(M) Amendments

(1) Whenever there is a material change in any information or document filed with the Division, the issuer must file a correcting amendment with the Division within ten working days after the material change.

(2) There is no charge for filing a correcting amendment.

KEY: financial statements, securities, securities regulation
Date of Enactment or Last Substantive Amendment: ~~July 3, 1997~~2009
Notice of Continuation: July 30, 2007
Authorizing, and Implemented or Interpreted Law: 61-1-10; 61-1-24

Commerce, Securities
R164-11-1
General Registration Provisions

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 33012
 FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment implements changes necessitated by the passage of H.B. 78 in the 2009 General Session. (DAR NOTE: H.B. 78 (2009) is found at Chapter 351, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendment modifies Subsection R164-11-1(A)(1) of the rule to reflect H.B. 78's repeal of Section 61-1-8 (Registration by Notification).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-11 and Section 61-1-24

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No additional costs or savings are anticipated. The repealed section of the Act (Section 61-1-8) established a method for registering securities entitled Registration by Notification. Subsequent changes to state and federal law have rendered this method obsolete and no such registrations have been received by the Division of Securities since 1986.
- ◆ **LOCAL GOVERNMENTS:** No effect--Local government entities do not engage in any regulation in the area of securities registrations.
- ◆ **SMALL BUSINESSES:** No effect--Small business entities no longer make use of the repealed provision.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No effect--The entities contemplated herein no longer make use of the repealed provision.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No effect--The entities contemplated herein no longer make use of the repealed provision.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The entities that formerly used Registration by Notification now utilize other registration or exemption provisions in their offers and sales of securities. Loss of this obsolete and unused method will have no fiscal impact on business.

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

COMMERCE
 SECURITIES
 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:

◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.
R164-11. Registration Statement.
R164-11-1. General Registration Provisions.

A. Preliminary Notes

(1) This R164-11-1 applies to public offerings registered by ~~[notification]~~ coordination or qualification pursuant to Sections ~~[8-]~~9 ~~[and]~~or 10 of the Utah Uniform Securities Act (the "Act"), except this rule shall not apply to offerings which are registered in twenty or more states, including the state of Utah.

(2) The purpose of the rule is to ensure full disclosure of material information, prohibit offerings which tend to work a fraud on purchasers and prohibit unreasonable amounts of promoters' profits.

(3) Failure to comply with the provisions of this rule shall be grounds for denial, suspension or revocation of the effectiveness of a registration statement.

(4) For purposes of this rule "development stage companies" shall mean those companies that devote substantially all of their efforts to acquiring or establishing a new business and in which either: 1) planned principal operations have not commenced or 2) there have been no significant revenues therefrom.

(5) Selected requirements of this rule may be waived by the Utah Securities Division ("Division") where an applicant makes a specific request for a waiver and the Division finds that such requirement(s) is/are not necessary or appropriate for the protection of investors.

(6) This rule applies to all registration statements filed on or after February 15, 1986.

B. NASAA Statements of Policy

All registration statements for oil and gas programs, church bonds, real estate investment trusts, publicly-offered cattle-feeding programs, real estate programs and equipment programs must satisfy the provisions of the appropriate statements of policy adopted by the North American Securities Administrators Association ("NASAA").

Offerings which are required under this paragraph B to satisfy, and do satisfy, the provisions of a NASAA statement of policy shall not be required to satisfy the provisions of paragraphs C and D of this R164-11-1.

C. Promoters' Investment in Development Stage Companies

An investment by promoters and shareholders in a development stage company shall be required as follows:

(1) Corporate Equity and Debt Offerings.

Prior to and during the effectiveness of a registration statement, where the registrant is the issuer, pertaining to an offering of securities which are corporate equity securities, which are securities convertible into corporate equity securities or which are corporate debt securities, the corporation shall have equity equal to at least the lesser of: 1) ten percent (10%) of the aggregate offering price of the securities which are registered or to be registered or 2) fifty thousand dollars (\$50,000). Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash and retained earnings. Retained deficits will not reduce the equity of the company for purposes of this subparagraph. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph.

NOTE: Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the registrant, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(2) Partnership and Trust Certificate Offerings.

Prior to the effectiveness of a registration statement relating to partnership units, the registrant shall meet one of the following requirements:

(a) The general partner(s), promoter(s), and/or manager(s) have paid, in cash, at least an amount equal to five percent (5%) of the aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer; or

(b) The general partner(s), promoter(s), and/or manager(s) have the ability to pay and commit themselves to pay, in cash, the lesser of: 1) five percent (5%) of the aggregate offering price of the securities to be registered or 2) fifty thousand dollars (\$50,000); or

(c) The general partner(s), promoter(s), and/or manager(s) have an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to ten percent (10%) of the aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

D. Business Plan and Use of Proceeds for Development State Companies

In a development stage company the business plan and the use of offering proceeds must be disclosed with specificity in the offering prospectus.

Where eighty percent (80%) or more of the net offering proceeds (total offering proceeds less offering expenses and commissions) is not specifically allocated for the purchase, construction or development of identified properties or products, discharge of indebtedness, payment of overhead, etc., the registrant shall comply with the following provisions:

(1) Eighty percent (80%) of the net offering proceeds shall be escrowed in a manner approved by the Division. The escrow shall continue until the registrant can specifically allocate the use of the proceeds, at which time the registrant shall amend or supplement the registration statement to disclose all material information concerning the proposed use of proceeds. Such disclosure shall be in the same form and quality as required in a registration statement.

(2) At the time of the amendment or supplement to the registration statement, the investors in the offering must be given no less than twenty (20) days to ratify or rescind his/her investments. Investors who choose to rescind his/her investments shall receive a pro rata refund of all offering proceeds. However, should enough investors request a refund such that the net tangible asset value of the company after the refund would be less than seventy-five thousand dollars (\$75,000) the registrant shall make a pro rata refund of all unused offering proceeds to investors.

(3) The registrant shall not issue stock, deliver stock certificates or allow secondary trading of the stock until the offering proceeds have been released to the registrant.

E. Employment of Agents by Issuers

An issuer shall not employ agents to sell securities which are the subject of the registration statement until: 1) such agent is registered with the Division as an agent of the issuer; and 2) the issuer has filed with the Division a surety bond in the amount of twenty-five thousand dollars (\$25,000) conditioned on the agents compliance with the Utah Uniform Securities Act and the rules of the Securities Division of the Utah Department of Commerce and covering the effective period of the issuer's registration statement.

KEY: securities regulation

Date of Enactment or Last Substantive Amendment: ~~January 5, 2004~~ 2009

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-11(7) (b)

**Commerce, Securities
R164-12-1f
Commissions on Sales of Securities**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33013

FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment implements changes necessitated by the passage of H.B. 78 in the 2009 General Session. The Amendment also updates relevant references to reflect the reorganization and name change of the National Association of Securities Brokers to the Financial Industry Regulatory Authority. (DAR NOTE: H.B. 78 (2009) is found at Chapter 351, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendment modifies Subsection R164-12-1f(A)(1) of the rule to reflect H.B. 78's repeal of Section 61-1-8 of the Act and modifies Subsection R164-12-1f(A)(3) to reflect the reorganization and name change of the National Association of Securities Brokers to the Financial Industry Regulatory Authority.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-10 and Section 61-1-24

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No additional costs or savings. The amendment updates a reference to the name of an outside regulatory entity and removes a reference to a now-repealed method of securities registration.
- ◆ **LOCAL GOVERNMENTS:** No effect--Local government entities do not engage in any regulation in the area of securities registrations.
- ◆ **SMALL BUSINESSES:** No effect--The amendment merely updates a reference to the name of an outside self-regulatory entity and recognizes the repeal of a registration method no longer used by small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No effect--The amendment merely updates a reference to the name of an outside self-regulatory entity and recognizes the repeal of a registration method no longer used by the entities contemplated herein.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No effect--The amendment merely updates a reference to the name of an outside self-regulatory entity and recognizes the repeal of a registration method that was no longer in use prior to its repeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment reflects the name change of a self-regulatory organization and the repeal of an obsolete method of registering securities. Its implementation will have no fiscal impact on business.

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

COMMERCE
SECURITIES
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:

- ◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.**R164-12. Sales Commission.****R164-12-1f. Commissions on Sales of Securities.****A. Preliminary Notes**

(1) This R164-12-1f regulates the compensation which may be received by any person in connection with a public offering of securities pursuant to a registration by qualification under Section 10 of the Utah Uniform Securities Act (the "Act"). The Rule does not effect offerings which are registered by ~~notification or~~ coordination or offerings which are sold pursuant to an exemption from the Act.

(2) This R164-12-1f does not effect the requirements of the Act and the rules thereunder as to registration, supervision and termination of agents.

(3) This R164-12-1f is an extended version of the standards that the Utah Securities Division (the "Division") has in the past required to be met. The standards herein are based upon reasonableness, the NASAA guidelines as to options and warrants issued to underwriters, and ~~the NASD's~~ FINRA's interpretations of fair compensation. The percentage of cash commissions that is permitted under this R164-12-1f is unchanged from the former Rule A67-03-12.

B. Persons Subject to this Rule

(1) This R164-12-1f regulates compensation to participants in a distribution of securities which are registered by qualification pursuant to Section 10 of the Act and the rules and regulations thereunder.

(2) No registrant, affiliate of a registrant, or person acting on behalf of a registrant in connection with a public offering registered pursuant to Section 10 of the Act may give, directly or indirectly, compensation which is in violation of this R164-12-1f.

(3) No agent, underwriter or affiliate of an agent or underwriter may receive, directly or indirectly in connection with a public offering registered pursuant to Section 10 of the Act, compensation which is in violation of this R164-12-1f.

C. Definitions

As used in this R164-12-1f, the following terms shall have the indicated meanings:

(1) "Compensation" includes all cash; the value of all options, warrants, rights and other securities; the gross amount of the underwriter's discount; total expenses payable by the issuer, whether accountable or non-accountable, to or on behalf of the participant in the distribution which would normally be paid by the

participant in the distribution; counsel's fees and expenses of the participant in the distribution payable by the issuer; finder's fees; financial consulting and advisory fees; and the value of all contracts and agreements with respect to the issuer or its affiliates which are connected with the distribution or with the negotiation of compensation in the distribution.

(2) "Corporate equity security" means any security which presently represents an ownership interest in a corporate entity and which includes common stock and preferred stock but does not include a security which is not presently, but is at some future time convertible into, a corporate equity security.

(3) "Participant in the distribution" means any person offering, selling, delivering, distributing, soliciting interest in or otherwise involved in the distribution, offer or sale of securities to the public or to any member of the public and includes persons commonly known as underwriters, agents and finders.

D. Maximum Compensation

(1) Distributions of Corporate Equity Securities: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of corporate equity securities is an amount equal to 15% of that portion of the public offering price of the securities being distributed which is actually received by or on behalf of the registrant; provided, however, that any securities issued in connection with such distribution comply with paragraph F of this R164-12-1f.

(2) All Other Distributions: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of securities other than corporate equity securities shall be 20% of that portion of the public offering price of the securities being sold which is actually received by or on behalf of the registrant; provided, however, that any securities issued also comply with paragraph F of this R164-12-1f.

E. Determination of Amount Received by or on Behalf of the Registrant

The amount of the public offering price which is actually received shall be determined as follows:

(1) The following shall be included:

- (a) Cash received;
- (b) Fair market value of any securities received; and
- (c) Fair market value of any tangible property received excluding items listed in subparagraph E(2) of this R164-12-1f.

(2) The following shall be excluded:

- (a) Promissory notes or similar promises to provide cash or property in the future;
- (b) Assessments, whether conditional or obligatory; and
- (c) Intangible property such as patents, royalties, etc.

F. Securities Issued to Participants in a Distribution

(1) Options or Warrants:

Options or warrants issued to participants in a distribution must be justified by the applicant. Options or warrants will be considered justified if all of the conditions of this paragraph F are met.

(a) The options or warrants are issued only to a broker-dealer registered with this Division and are not transferable except in cases where the broker-dealer is a partnership and then only within the partnership.

(b) The number of shares covered by all options or warrants does not exceed ten percent of the shares to be outstanding upon completion of the offering.

(c) The options or warrants do not exceed five years in duration and are exercisable no sooner than one year after issuance.

(d) The initial exercise price of the options or warrants is at least equal to the public offering price plus a step-up of said public offering price of either seven per cent each year they are outstanding, so that the exercise price throughout the second year is one hundred seven per cent, throughout the third year one hundred fourteen per cent, throughout the fourth year one hundred twenty-one per cent, throughout the fifth year one hundred twenty-eight per cent; or in the alternative, twenty per cent at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the broker-dealer at the time that the options or warrants are issued.

(e) The options or warrants are issued by a relatively small company, which is in the promotional stage, or which, because of its size, lacks public ownership of its shares, or other facts and circumstances make it appear that the issuance of options is necessary to obtain competent investment banking services.

(f) The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of such options or warrants; provided that if such reason relates to future advisory services to be performed by the broker-dealer without compensation in consideration for the issuance of such options or warrants, a statement to that effect is placed in the prospectus.

(g) The total amount of options and warrants issued or reserved for issuance at the date of the public offering shall be reasonable. The amount of options and warrants shall be presumed reasonable if the number of shares represented by such options and warrants does not exceed a number equal to ten per cent of the number of shares outstanding during the period the registration is in effect. The number of options and warrants reserved for issuance may be disregarded if the issuer files an undertaking or states in the prospectus that the amount of outstanding options and warrants shall not exceed the above limitation during the period the registration is in effect.

(2) The value of any securities received, which value shall be included in determining the amount of compensation for the purposes of paragraph D of this R164-12-1f shall be as follows:

(a) Options/Warrants: The market value of such options or warrants, if any, shall be used. In cases where no market value exists, a presumed fair value of twenty per cent of the public offering price of the shares to which the options or warrants pertain shall be used, unless evidence indicates that a contrary valuation exists.

(b) Stock: The amount of compensation received when stock is issued shall be the difference between the cost of such stock and the proposed public offering price or, in the case of securities with a bona fide independent market, the cost of such stock and price of the stock on the market on the date of purchase. If, however, there is a binding obligation to hold such stock for a substantial period of time, an adjustment in such valuation may be made.

(c) Convertible Securities: The amount of compensation received when convertible securities are issued shall be the difference between the conversion price and the proposed public offering price or, in the case of securities with a bona fide independent market, the conversion price and the price of the stock on the market on the date of purchase.

(3) Equity Securities Issued to Participants in a Distribution:

Equity securities or securities convertible into equity securities, when combined with securities issued pursuant to subsection (F)(1) of this Rule, acquired by a participant in a distribution, whether acquired prior to, at the time of, or after, but which are determined to be in connection with or related to, the offering shall not in the aggregate be more than ten percent of the total number of units being offered in the proposed offering. The maximum limitation in the case of "best efforts" underwritings or participations shall be on the basis of no more than one unit received for every ten units actually sold. For the purposes of this paragraph:

(a) No securities shall be issued to a participant in a distribution where such participant is not a broker-dealer registered with this Division;

(b) Over-allotment shares and shares underlying warrants, options, or convertible securities which are part of the proposed offering are not to be counted as part of the aggregate number of shares being offered against which the ten percent limitation is to be applied.

(c) In an exceptional or unusual case involving an offering of convertible securities of a company whose stock already has a public market and where the circumstances require, taking into consideration the conversion terms of the securities to be received by the above persons, the receipt of underlying shares by such persons aggregating the above referred to ten percent limitation may be considered improper and a lesser amount considered more appropriate.

(d) In an exceptional or unusual case, where a large number of shares of a company are already outstanding and/or the purchase price of the securities, risk involved or the time factor as to acquisition or other circumstances justify, a variation from the above limitations may be permitted but in all cases the burden of demonstrating justification for such shall be upon the person seeking the variation.

KEY: securities regulation

Date of Enactment or Last Substantive Amendment: ~~[1987]~~2009

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-12(1) (f)

Commerce, Securities
R164-13
Definitions

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33014

FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 78 passed in the 2009 General Session moved all of the defined terms formerly contained in this rule into Section 61-1-13. (DAR NOTE: H.B. 78 (2009) is found at Chapter 351, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-13

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No additional costs or savings. The removal to the statute of the definitions formerly contained in this rule will not necessitate any changes in personnel or operations.

◆ **LOCAL GOVERNMENTS:** No effect--Local government personnel will be able to reference any needed definitions in the statute.

◆ **SMALL BUSINESSES:** No effect--Small businesses will be able to readily reference the definitions in the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No effect--The entities contemplated herein will be able to readily reference the definitions in the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No effect--Affected persons will be able to readily reference the definitions in the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule reflects policy decisions by the Legislature to transfer key definitions relevant to securities regulation to Section 61-1-13 of the Utah Uniform Securities Act. All definitions will be readily accessible in the statute and businesses will suffer no adverse fiscal impact.

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

COMMERCE
SECURITIES
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:

◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

~~[R164-13. Definitions.~~

~~R164-13-1. Definitions.~~

- ~~_____ (A) Authority and purpose~~
- ~~_____ (1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.~~
- ~~_____ (2) This rule defines several terms used in Title 61, Chapter 1, Utah Uniform Securities Act.~~
- ~~_____ (B) Terms defined~~
- ~~_____ In addition to the definitions in Section 61-1-13, as used in Title 61, Chapter 1:~~
- ~~_____ (1) "Investment contract" includes:~~
 - ~~_____ (1)(a) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or~~
 - ~~_____ (1)(b) any investment by which:~~
 - ~~_____ (1)(b)(i) an offeree furnishes initial value to an offerer;~~
 - ~~_____ (1)(b)(ii) a portion of this initial value is subjected to the risks of the enterprise;~~
 - ~~_____ (1)(b)(iii) the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and~~
 - ~~_____ (1)(b)(iv) the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.~~
 - ~~_____ (2) "Isolated transaction" means not more than a total of two transactions which occur anywhere during six consecutive months.~~

~~KEY: securities, securities regulation~~

~~Date of Enactment or Last Substantive Amendment: July 3, 1997~~

~~Notice of Continuation: July 30, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-1-13; 61-1-24]~~

Commerce, Securities
R164-18-6
Procedures for Administrative Actions

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 33016
 FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment reflects the repealing and

renumbering, in the 2008 General Session, of former Sections 63-1-1 to 63-99-110 (State Affairs in General) to new Sections 63A-1-101 to 63M-11-207 and 79-2-201 to 79-5-503. Specifically, this amendment reflects the renumbering of provisions relating to Title 63G, Title 4, Administrative Procedures Act. The amendment also modifies certain items in response to H.B. 78 (2009 General Session) and S.B. 64 (2005 General Session). (DAR NOTE: H.B. 78 (2009) is found at Chapter 351, Laws of Utah 2009, and was effective 05/12/2009. S.B. 64 (2005) is found at Chapter 257, Laws of Utah 2005, and was effective 05/02/2005.)

SUMMARY OF THE RULE OR CHANGE: Subsections R164-18-6(A)(1) and (C) are modified to reflect the repealing and renumbering of the Utah Administrative Procedures Act. Subsections R164-18-6(D) and (F)(1) are modified to reflect changes enacted by H.B. 78 (2009 General Session) and S.B. 64 (2005 General Session). Subsection R164-18-6(F)(2)(E) is added to define the administrative hearing rights granted to applicants for the new exemption enacted by H.B. 78 at Subsection 61-1-14(2)(j)(ii)(E)(II).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24 and Section 63G-4-202 and Section 63G-4-203 and Section 63G-4-503

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No additional costs or savings anticipated. The enactment of the new exemption provision will not necessitate any additional dedication of state resources. Procedures for administrative actions remain substantively unchanged.
- ◆ LOCAL GOVERNMENTS: No effect--Local government entities do not administer any provisions relating to administrative hearings under the Utah Uniform Securities Act.
- ◆ SMALL BUSINESSES: The specific changes made to this rule will not affect small businesses. However, the enactment by H.B. 78 of the new exemption from registration for transactions with existing shareholders may result in some monetary savings. The broadening of the scope of the aforementioned exemption may allow businesses that would formerly have registered their transactions to utilize a less costly exemption from registration.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The specific changes made to this rule will not affect the entities contemplated herein. However, the enactment by H.B. 78 of the new exemption from registration for transactions with existing shareholders may result in some monetary savings. The broadening of the scope of the aforementioned exemption may allow businesses that would formerly have registered their transactions to utilize a less costly exemption from registration.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The specific changes made to this rule will not affect persons. However, the enactment by H.B. 78 of the new exemption

from registration for transactions with existing shareholders may result in some monetary savings. The broadening of the scope of the aforementioned exemption may allow businesses that would formerly have registered their transactions to utilize a less costly exemption from registration.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment reflects provisions enacted by the Legislature in the repeal/renumbering of the Administrative Procedures Act and in the two other bills referenced above. No adverse fiscal impact is expected on business and the broadening of the exemption from registration for transactions with existing shareholders may result in a fiscal benefit for securities issuers.

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

COMMERCE
SECURITIES
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:

◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

R164-18. Procedures.

R164-18-6. Procedures for Administrative Actions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections ~~[63-46b-4]~~63G-4-202, ~~[63-46b-5]~~63G-4-203, ~~[63-46b-21]~~63G-4-503, and 61-1-24.

(2) The purpose of this rule is to:

(a) designate those actions which the Division shall deem to be requests for initial agency action;

(b) designate those categories of adjudicative proceedings which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce;

(c) set forth circumstances in which hearings shall be required or permitted; and

(d) clarify certain Division policies regarding declaratory orders.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "CRD" means the Central Registration Depository, Inc.

(3) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(4) "Division" means Division of Securities, Utah Department of Commerce.

(C) Categorization of Adjudicative Proceedings

All adjudicative proceedings under the Act are designated as informal adjudicative proceedings, except that the director may convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection ~~[63-46b-4(3)]~~63G-4-202(3).

(D) Commencement of Adjudicative Proceedings

Filing of the following documents with the Division shall be deemed to be a request for initial Division action:

(1) SEC Form BD - Uniform Application for Broker-Dealer Registration pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(2) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(3) SEC Form ADV - Uniform Application for Investment Adviser Registration pursuant to Sections 61-1-4 and R164-4-2 (whether filed with the division or the CRD);

~~[(4) Application for Registration by Notification - Filed pursuant to Section 61-1-8;~~

~~[(5)](4)~~ NASAA Form U-1 - Uniform Application to Register Securities pursuant to Sections 61-1-9 and R164-9-1;

~~[(6)](5)~~ Form 10-2-1 - Application for Registration by Qualification pursuant to Sections 61-1-10 and R164-10-2;

~~[(7)](6)~~ Request for declaratory order designating a person as not being within the definition of "broker-dealer" as defined in Subsection 61-1-13~~[(3)](1)(c)~~, or "agent" as defined in Subsection 61-1-13~~[(2)](1)(b)~~;

~~[(8)](7)~~ Request for declaratory order designating a person as not being within the definition of "investment adviser" as defined in Subsection 61-1-13~~[(15)](1)(q)~~, or "investment adviser representative" as defined in Subsection 61-1-13~~[(6)](1)(r)~~;

~~[(9)](8)~~ Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)~~[(11)](i)~~ (exempt securities);

~~[(10)](9)~~ Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)~~[(11)](v)~~ (exempt transactions);

~~[(11)](10)~~ Request for order releasing impounded funds pursuant to Section R164-11-7b;

~~[(12)](11)~~ Request for confirmation of exchange listing exemption pursuant to Section R164-14-1~~[(11)](e)~~;

~~[(13)](12)~~ Request for confirmation of investment company ~~[blue chip fund]~~ exemption pursuant to Subsection 61-1-14(1)~~[(11)](h)~~;

~~[(14)](13)~~ Request for confirmation of manual listing exemption pursuant to Section R164-14-2b;

~~[(15)](14)~~ Request for confirmation of secondary trading exemption pursuant to Section R164-14-2m;

~~[(+6)](15)~~ Request for confirmation of reorganization exemption pursuant to Section R164-14-2p.

(E) Procedures for Informal Adjudicative Proceedings

A hearing will be held only if required by the Act or by the provisions of this section. When a hearing is permitted but not required, a hearing will be held only if requested by a party within 30 days from the date a notice of agency action is mailed.

(F) Hearings: When Held

(1) Under the Act, a hearing is not required and will not be held in the following adjudicative proceedings:

(a) Licensing of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-4;

(b) Order requiring applicant to publish announcement of application pursuant to Subsection 61-1-4(1)(c);

(c) Cancellation of registration or application of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Subsection 61-1-6(5);

~~[(d)] Grant of registration by notification pursuant to Section 61-1-8;~~

~~[(e)](d)~~ Grant of registration by coordination pursuant to Section 61-1-9;

~~[(+)](e)~~ Stop order based on failure to file price amendments pursuant to Subsection 61-1-9(5);

~~[(+)](f)~~ Grant of registration by qualification pursuant to Section 61-1-10;

~~[(+)](g)~~ Order requiring additional information or verification pursuant to Subsection 61-1-10(2)(q);

~~[(+)](h)~~ Order imposing conditions of registration pursuant to Subsection 61-1-11(7);

~~[(+)](i)~~ Order vacating or modifying stop order pursuant to Subsection 61-1-12(2);

~~[(+)](j)~~ Order designating a person as not being within the definition of a "broker-dealer" pursuant to Subsection 61-1-13~~[(+)](c)~~ or "agent" pursuant to Subsection 61-1-13~~[(+)](1)(b)~~;

~~[(+)](k)~~ Order designating a person as not being within the definition of "investment advisor" pursuant to Subsection 61-1-13~~[(+)](1)(q)~~, or "investment adviser representative" pursuant to Subsection 61-1-13~~[(+)](1)(r)~~;

~~[(+)](l)~~ Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)~~[(+)](i)~~ (exempt securities);

~~[(+)](m)~~ Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)~~[(+)](v)~~ (exempt transactions);

~~[(+)](n)~~ Order requiring filing of prospectus, sales literature, etc. pursuant to Section 61-1-15;

~~[(+)](o)~~ Order releasing impounded funds pursuant to Section R164-11-7b;

~~[(+)](p)~~ Order to show cause pursuant to Subsection 61-1-20(1)(a);

~~[(+)](q)~~ Confirmation of exchange listing exemption pursuant to Section R164-14-1~~[(+)](g)~~;

~~[(+)](r)~~ Confirmation of investment company~~[blue chip fund]~~ exemption pursuant to Subsection 61-1-14(1)~~[(+)](h)~~;

~~[(+)](s)~~ Confirmation of manual listing exemption pursuant to Section R164-14-2b;

~~[(+)](t)~~ Confirmation of secondary trading exemption pursuant to Section R164-14-2m;

~~[(+)](u)~~ Confirmation of reorganization exemption pursuant to R164-14-2p.

(2) In the following proceedings, a hearing will be held only if timely requested:

(a) Petition for order denying, suspending or revoking registration of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-6;

(b) Petition for stop order denying, suspending or revoking effectiveness of a securities registration statement pursuant to Section 61-1-12;

(c) Order denying or revoking exemption under Subsection 61-1-14(2)(p)(v);

(d) Petition for order denying or revoking exemption from registration pursuant to Subsection 61-1-14(4);

~~[(e)] Order denying or revoking exemption under Subsection 61-1-14(2)(j)(i)(E)(II).~~

(G) Declaratory Orders

(1) The Division will not issue declaratory orders when a petition requests a ruling with respect to the applicability of Section 61-1-1.

(2) A request for a "no-action" letter under Section R164-25-5 shall be deemed to be a petition for a declaratory order.

KEY: securities regulation, adjudicative procedures

Date of Enactment or Last Substantive Amendment: ~~July 3, 1997~~**2009**

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-18.3; 61-1-4; 61-1-11

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1B
Prohibition of Payment for Certain
Abortion Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33008

FILED: 09/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify one of the exceptions in the rule that allows a Medicaid provider to use public funds to pay for an abortion. The other purpose is to specify the penalty for authorizing the use of public funds when one of the three funding exceptions to perform an abortion is not met.

SUMMARY OF THE RULE OR CHANGE: This change clarifies the "damage to a major bodily function" exception in the rule that allows a Medicaid provider to use public funds to pay for an abortion. It further specifies the penalty for state employees who authorize the use of public funds to pay for an abortion that does not meet one of the three funding exceptions. It also includes other minor revisions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Section 76-7-331

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no expected impact to the state budget due to this clarification. Existing policy on the use of public funds to pay for an abortion has always required use of this definition.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they do not fund or provide abortion services to Medicaid clients.
- ◆ **SMALL BUSINESSES:** There is no expected impact to small businesses. Existing policy on the use of public funds to pay for an abortion has always required use of this definition. No provider is predicted to lose any funding.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected impact to other businesses. Existing policy on the use of public funds to pay for an abortion has always required use of this definition. No provider is predicted to lose any funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single person or entity predicted due to this clarification of existing policy. Compliance should be enabled due to this clarification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule clarifies a definition that should avoid confusion and not lead to denial of any service that was previously reimbursed.

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 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 NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: David Sundwall, Executive Director

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

R414-1B. Prohibition of Payment for Certain Abortion Services.

R414-1B-1. Introduction and Authority.

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in [Utah Code]Section 76-7-331. It is authorized by [Utah Code]Sections 26-1-5 and 26-18-3.

R414-1B-3. Certification.

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004, must certify that public funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant woman provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option. Damage to a major bodily function refers only to injury or impairment of a physical nature and may not be interpreted to mean mental, psychological, or emotional harm, illness, or distress.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

R414-1B-4. Standards for Certification.

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in [Utah Code s]Section 76-7-[326]331 and to assess whether it receives public funds for any abortion that is not excepted in [subsections (a), (b), or (c) of Utah Code s]Subsection 76-7-[326]331(2)(a)(b), or (c).

(2) A provider is not using public funds to directly or indirectly fund prohibited abortion services if it certifies that:

(a) it uses non-public funds to make up any difference between the reimbursement it receives from all payors for services identified by abortion billing codes, other than those services identified in Subsection R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) it has adopted another method, based on generally accepted accounting principles, that provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

R414-1B-5. State Officer or Employee Authorization of Funds for Abortion.

Any officer or employee of the state who knowingly authorizes the use of funds shall be dismissed from that person's office or position and the person's employment shall be immediately terminated.

KEY: Medicaid, abortion, physicians, hospitals
Date of Enactment or Last Substantive Amendment: [~~October 6, 2004~~2009]
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3;76-7-331

**Insurance, Administration
 R590-76**

**Health Maintenance Organizations and
 Limited Health Plans**

**NOTICE OF PROPOSED RULE
 (Amendment)**

**DAR FILE NO.: 33018
 FILED: 10/01/2009**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed at the request of the insurance industry.

SUMMARY OF THE RULE OR CHANGE: The changes allow Health Maintenance Organizations (HMOs) to offer stand-alone dental and vision products with a closed HMO panel. The change will allow a great variety of plans to be offered in the marketplace thus providing more choices for consumers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 31A, Chapter 8

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The changes to this rule will not increase the revenue into the department or the state. Utah currently has nine HMOs. The Division does not know how many will develop stand-alone vision and dental plan but at least two or three will and possibly more. This will require them to file with the department new policy and rate forms for each new product they produce. This will increase the department's workload but the insurer will not be required to pay the department for the filing.

♦ **LOCAL GOVERNMENTS:** Local governments will not be affected by these changes since they deal solely with the relationship between the department and their health insurance licensees.

♦ **SMALL BUSINESSES:** Most of these HMOs would be considered small businesses. Several of the HMOs are run by their parent companies, which are large employers. There are at least two ways an HMO will be impacted by the changes to this rule. First, if an HMO decides to sell these stand-alone dental and vision plans they will be required to file them electronically with the state. Each filing packet will cost them \$15. Adding to their product line may also increase their business which would increase their revenue stream up front. How many HMOs will produce and sell these new plans is not known at this time. Currently there are nine HMOs in Utah.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Consumers will have an additional option when they purchase insurance. They can either purchase the dental and vision plans in a package with their HMO plan or separately as a stand-alone plan.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are at least two ways an HMO will be impacted by the changes to this rule. First, if an HMO decides to sell these stand-alone dental and vision plans they will be required to file them electronically with the state. Each filing packet will cost them \$15. Adding to their product line may also increase their business which would increase their revenue stream up front. How many HMOs will produce and sell these new plans is not known at this time. Currently there are nine HMOs in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact resulting from these changes will be minimal. It will increase the number of choices consumers will have. How many of these plans will sell is unknown. It will be an additional product offered by HMOs that will give consumers more choices.

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 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 NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-76. Health Maintenance Organizations and Limited Health Plans.

R590-76-4. HMO Definitions.

A group or individual contract and evidence of coverage delivered or issued for delivery to any person in this state by an HMO required to obtain a certificate of authority in this state shall contain definitions respecting the matters set forth below. The definitions shall comply with the requirements of this section. Definitions other than those set forth in this regulation may be used as appropriate providing that they do not contradict these requirements. As used in this regulation and as used in the group or individual contract and evidence of coverage:

(1) "Coinsurance" is the enrollee's cost-sharing amount expressed as a percentage of covered charges.

(2) "Copayment" means, other than coinsurance, the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.

(3) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs or provide the services associated with treatment.

(4) "Directors" mean the executive director of Department of Health or his authorized representative, and the director of the Health Division of the Utah Insurance Department.

(5) "Eligible dependent" means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

(6) "Emergency care services" means services for an emergency medical condition as defined in 31A-22-627(3).

(a) Within the service area, emergency care services shall include covered health care services from non-affiliated providers only when delay in receiving care from the HMO could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) Outside the service area, emergency care services include medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the HMO's service area.

(7) "Evidence of coverage" means a certificate or a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to

hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings which operate within their specific licensure requirements.

(9) "Grievance" means a written complaint submitted in accordance with the HMO's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the HMO relative to the enrollee.

(10) "Group contract" means a contract for health care services by which its terms limit eligibility to enrollees of a specified group.

(11) "Group contract holder" means the person to which a group contract has been issued.

(12) "Incidental coverage" means a contract or endorsement offered by an HMO that provides limited health plan benefits as defined in Subsection 31A-8-101(6)(a).

(13) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include coverage for dependents of the subscriber.

~~(14)(13)~~ "Medical necessity" or "medically necessary" means:

(a) Health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

~~(15)(14)~~ "Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

~~(16)(15)~~ "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of the license.

~~(17)(16)~~ "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.

~~(18)(17)~~ "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

~~(19)[(48)]~~ "Service area" means the geographical area within a 40-mile radius of the HMO's health care facility.

~~(20)[(49)]~~ "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO, or in the case of an individual contract, the person in whose name the contract is issued.

R590-76-7. HMO Services.

(1) Access to Care.

(a) An HMO shall establish and maintain adequate arrangements to provide health services for its enrollees, including:

(i) reasonable proximity to the business or personal residences of the enrollees so as not to result in unreasonable barriers to accessibility;

(ii) reasonable hours of operation and after-hours services;

(iii) emergency care services available and accessible within the service area 24 hours a day, 7 days a week; and

(iv) sufficient providers, personnel, administrators and support staff to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

(b) If a primary care physician is required in order to obtain covered services, an HMO shall make available to each enrollee a primary care physician and provide accessibility to medically necessary specialists through staffing, contracting or referral.

(c) An HMO shall have written procedures governing the availability of services utilized by enrollees, including at least the following:

- (i) well-patient examinations and immunizations;
- (ii) treatment of emergencies;
- (iii) treatment of minor illness; and
- (iv) treatment of chronic illnesses.

(2) Basic health care services. An HMO shall provide, or arrange for the provision of, as a minimum, basic health care services, which shall include the following:

- (a) emergency care services;
- (b) inpatient hospital services, meaning medically necessary hospital services including:
 - (i) room and board;
 - (ii) general nursing care;
 - (iii) special diets when medically necessary;
 - (iv) use of operating room and related facilities;
 - (v) use of intensive care units and services;
 - (vi) x-ray, laboratory and other diagnostic tests;
 - (vii) drugs, medications, biologicals;

- (viii) anesthesia and oxygen services;
- (ix) special nursing when medically necessary;
- (x) physical therapy, radiation therapy and inhalation

therapy;

- (xi) administration of whole blood and blood plasma; and
- (xii) short-term rehabilitation services;

(c) inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by physicians or other providers including diagnostic, therapeutic, medical, surgical, preventive, referral and consultative health care services;

(d) Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital-based health care facility or at a hospital. Outpatient medical services shall include:

- (i) diagnostic services;
- (ii) treatment services;
- (iii) laboratory services;
- (iv) x-ray services;
- (v) referral services;
- (vi) physical therapy, radiation therapy and inhalation therapy; and
- (vii) preventive health services, which shall include at least a range of services for the diagnosis of infertility, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice;

(e) Coverage of inborn metabolic errors as required by 31A-22-623 and Rule R590-194, Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism, and benefits for diabetes as required by 31A-22-626 and Rule R590-200, Diabetes Treatment and Management.

(3) Out-of-area benefits and services. Other than emergency care, if the contract provides out-of-area services, they shall be subject to the same copayment, coinsurance, and deductible requirements set forth in R590-76-5(7).

(4)(a) An HMO may offer a contract or endorsement that provides incidental coverage.

(b) An incidental coverage contract or endorsement is exempt from the basic health care services and emergency care requirements set forth in this rule.

(c) An HMO offering an incidental benefit contract or endorsement may offer all of the basic health care services.

R590-76-12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date. [Effective January 1, 2003, the department will enforce this rule.]

KEY: HMO insurance

Date of Enactment or Last Substantive Amendment: [February 26, 2003]2009

Notice of Continuation: September 23, 2004

Authorizing, and Implemented or Interpreted Law: 31A-2-201

Labor Commission, Industrial Accidents
R612-2-5
 Regulation of Medical Practitioner Fees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33007

FILED: 09/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments to Section R612-2-5: 1) update the Labor Commission's standards for fees paid to medical providers providing care to injured workers under Utah's workers' compensation system; 2) set forth the options for seeking payment for medical procedures not included in the Commission's existing standards; and 3) make other nonsubstantive changes to simplify and clarify the language of the existing rule.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment removes an unnecessary listing of specific medical services that are subject to the rule and eliminates a reference to Ingenex methodology for computation of reimbursement rates for some pathology and laboratory services. The amendment incorporates by reference current versions of the Resource-Based Relative Value Scale (RBRVS), the American Medical Association's CPT-4 coding guidelines, and the Labor Commission's Medical Fee Guidelines. The amendment updates a reference to the Labor Commission's web site. Finally, the rule identifies existing methods by which injured workers and their medical providers can seek payment for medical services that are not otherwise addressed by this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Section 34A-2-101 et seq. and Section 34A-3-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 2009-2010 Medical Fee Guidelines, published by Industrial Accidents Division, 12/01/2009
- ◆ Updates The Resource-Based Relative Value Scale (RBRVS), published by Ingenix, 2009
- ◆ Updates CPT-4 Professional Edition, published by American Medical Association, 2009

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This proposed amendment will not impose any additional implementation or regulatory costs on the Labor Commission, which is the state agency charged with administering and enforcing Utah's workers' compensation system. The National Council on Compensation Insurance projects that overall workers'

compensation costs will increase by 1.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to the state in increased workers' compensation insurance premiums.

◆ **LOCAL GOVERNMENTS:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 1.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to local governments in increased workers' compensation insurance premiums.

◆ **SMALL BUSINESSES:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 1.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to small businesses in increased workers' compensation insurance premiums.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 1.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to employers in increased workers' compensation insurance premiums.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Workers' compensation insurance carriers and those providing medical services to injured workers will be affected by the proposed amendment. Because the RBRVS and CPT systems are already used throughout the health care industry, insurance carriers and medical providers already receive and use updates to those systems. The Commission does not anticipate that the updates required by this rule amendment will result in any additional compliance costs for those entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The workers' compensation system uses the same relative value (RBRVS) and coding (CPT) systems that are generally used throughout the health industry. Periodically, the RBRVS and CPT systems are updated. It is therefore necessary for the Commission to also adopt those changes in order to 1) avoid confusion and 2) provide adequate payment for medical care provided to injured workers. This year, the modifications to the RBRVS and CPT will result in increased payments for some medical services. These increases will be factored in to workers' compensation insurance premiums, but they are relatively small and may be offset by reductions in other factors.

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

LABOR COMMISSION
 INDUSTRIAL ACCIDENTS
 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:
♦ Larry Bunkall by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-5. Regulation of Medical Practitioner Fees.**

Pursuant to Section 34A-2-407(9):

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical [~~surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts~~] provider services as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 200[8]9 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 200[8]9 edition, coding guidelines.

a. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

b. The CPT-4 coding guidelines and RBRVS are subject to the Utah Labor Commission's 2009 - 2010 Medical Fee Guidelines [~~and Codes~~] and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective [July]December 1, 200[8]9: (Conversion Rates below EFFECTIVE [July]December 1, 200[8]9, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology \$41.00 (1 unit per 15 minutes of anesthesia);

Medicine, E and M \$46.00

Evaluation and Management codes 99201 - 99204 and 99211 - 99214 \$46.00

Pathology and Laboratory [~~The current RBRVS identifies values for specific codes that require Pathologist services. All other reimbursement rates for laboratory and pathology codes will be determined by the Ingenix ga-filled methodology. \$52.00;~~] 150% of Utah's published Medicare carrier

Radiology \$53.00;

Restorative Services \$46.00, with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.

Surgery \$37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's 2009 - 2010 Medical Fee Guidelines [~~and Codes~~], [~~as of~~] effective [July]December 1, 200[8]9. The Utah Medical Fee Guidelines [~~and Codes~~] can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at [http://laborcommission.utah.gov/IndustrialAccidents/pdfs/Med%20Fee%20Guidelines%20%202007%2008-07.pdf] http://laborcommission.utah.gov/Provider%20Page.htm1#Workers_Compensation.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

G. For procedures not covered by other provisions of this rule, medical providers have three options.

1. Medical providers may request preauthorization for a procedure from the insurance carrier.

2. Medical providers may present evidence to Medical Fee Committee for incorporating a procedure into the Commission's fee schedule. However, such incorporation will have prospective effect only.

3. Medical providers may apply for hearing before the Commission's Adjudication Division pursuant to Subsection 34A-2-801(1)(c) and Subsection 34A-2-407(9)(f) to establish a reasonable fee for the procedure.

KEY: workers' compensation, fees, medical practitioner

Date of Enactment or Last Substantive Amendment: [December 8, 2008]2009

Notice of Continuation: April 28, 2008

Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

Public Education Job Enhancement
Program, Job Enhancement Committee
R690-100

Public Education Job Enhancement Program Participant Eligibility and Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32986

FILED: 09/22/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide changes in the operation of the Program determined necessary by the Public Education Job Enhancement Program (PEJEP) Committee as the Program has evolved. The changes are provided to make the rule consistent with state law relating to open and public meetings, to tighten time lines, and to restrict eligibility to Utah higher education institutions with provisions for occasional exceptions.

SUMMARY OF THE RULE OR CHANGE: This rule provides language to make it consistent with the Utah Open and Public Meetings Act, provides notice to school districts, charter schools and participants that eligible participants must be newly hired to receive opportunity awards, requires enrollment at the first possibility enrollment opportunity following the award, and limits Advancement Awards for use only at Utah public or private accredited higher education institutions with rare exceptions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1a-602(5)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The state simply administers awards based on legislative appropriation.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts and charter schools do not receive awards.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. These awards are given within the public education system and there are no business costs.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Participants understand the requirements when they apply for the awards; there should be no unexpected costs to participants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Participants understand the requirements when they apply for the awards; there should be no unexpected costs to participants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the rule and I see no fiscal impact on businesses.

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

PUBLIC EDUCATION JOB ENHANCEMENT
PROGRAM
JOB ENHANCEMENT COMMITTEE
250 E 500 S
SALT LAKE CITY, UT 84414
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Clara Walters by phone at 801-538-7616, by FAX at 801-538-7973, or by Internet E-mail at clara.walters@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: John Sutherland, Chair, Job Enhancement Committee

R690. Public Education Job Enhancement Program, Job Enhancement Committee.

R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements.

R690-100-3. PEJEP Committee and Committee Expansion.

A. The PEJEP Committee identified in Section 53A-1a-602 may create subcommittees, including a PEJEP Executive Committee to increase the PEJEP Committee's effectiveness.

(1) The PEJEP Executive Committee shall be designated by the PEJEP Committee.

(2) All subcommittee recommendations shall be affirmed by the PEJEP Committee.

(3) Subcommittee membership and terms shall be determined by the PEJEP Committee.

B. The PEJEP Committee may add advisory committee members to inform the PEJEP Committee's decisions. Advisory committee members may meet regularly with the PEJEP Committee but may not vote or approve applicants for awards.

C.(1) The Committee may hold electronic meetings consistent with Section 52-4-207.

(2) Committee members may participate through electronic means if at least three Committee members are present at an established anchor location for the meeting.

(3) A quorum may be established that includes members participating electronically.

(4) Committee members participating through electronic means may officially vote on motions.

R690-100-4. Opportunity Awards.**A. Timelines for Opportunity Awards**

(1) The PEJEP Committee shall provide to all public school district superintendents and charter schools, by May 14 of each year, teacher information forms and funds available for Opportunity Awards consistent with critical areas of educator need identified under R690-100-1C.

(2) Information forms for awards shall also be available from the USOE and on-line through the USOE website.

(3) Completed information forms for Opportunity Awards, including required documentation, shall be due to the USOE from applying school districts and charter schools by November 1 annually.

(4) Recipients of Opportunity Awards shall receive the cash award in two installments, with the first initial payment at the beginning of the four year teaching commitment and the second installment at the conclusion of four consecutive years of teaching.

(a) The recipient shall repay a portion of the initial payment if the recipient fails to complete two years of the consecutive four year teaching commitment unless waived for good cause by the PEJEP Committee, designated in Section 53A-1a-602; and

(b) The recipient shall not receive the second installment if the recipient fails to complete the consecutive four year teaching commitment.

(5) The USOE shall receive documentation annually by October 1 from recipients of Opportunity Awards documenting a full-time schedule as educators during the previous school year.

(6) If the recipient desires to decrease his teaching employment to less than full-time, teach less than 50 percent of the teacher's course load in the area of the award, or take a leave of absence at any time, the recipient shall submit a formal written request to the PEJEP Committee. The PEJEP Committee may grant or deny permission for the employment change within 30 days of the request; if permission is denied by the PEJEP Committee, provisions under 53A-1a-601(1)(c)(ii) shall apply immediately.

(7) The USOE shall be immediately notified by the Opportunity Award recipient if the recipient changes employers, leaves public education, or moves from the state; provisions of 53A-1a-601(1)(c)(ii) shall apply immediately if the recipient leaves public education or leaves the state.

(8) Opportunity Award recipients shall notify the USOE at the conclusion of the recipient's consecutive four year teaching commitment.

(9) The USOE shall make the final Opportunity Award payment in a timely manner upon notification by the recipient and documentation of full-time employment during the required four year period.

B. Award and Funding Requirements for Opportunity Awards

(1) To be eligible to receive an award under this rule, an educator shall:

(a) have signed an employment contract with a public school district or charter school;

(b) be recommended by secondary school principal, school district superintendent or designee or charter school director;

(c) be a fully licensed educator in Utah or enrolled in an alternative educator licensing program in:

(i) pre-K-12+ special education; or

(ii) a secondary education endorsement program (grades 7-12) in critical areas of educator need identified under R690-100-1C; and

(d) have taught under a letter of authorization for at least one year in the areas referred to under Section 53A-1a-601(1) and received a superior evaluation as a classroom teacher.

(2) Licensed teachers newly hired in a school district or charter school providing instruction to students in any public classroom setting shall be eligible for an Opportunity Award.

C. School district/charter school responsibilities:

(1) An employing school district/charter school shall notify the USOE if a recipient of an Opportunity Award ends school district employment.

(2) An employing school district/award recipient shall notify the USOE if an Opportunity Award recipient has his teaching assignment changed to less than 50 percent of his assignment in the area that qualified the teacher for the award.

(3) An employing school district shall notify the USOE of any other award or scholarship or special compensation that an award recipient is receiving, to the best of the employer's information, from another source.

R690-100-5. Advancement Awards.**A. Timelines for Advancement Awards**

(1) Applications for Advancement Awards shall be available from the USOE and online through the USOE website.

(2) Educators may apply at any time throughout the year and may receive an award subject to funds available.

(3) Beginning in June 2008, upon receipt of the Advancement Award and each semester that recipient receives the Advancement Award, recipient shall provide documentation to the USOE that the recipient is enrolled in approved higher education course(s).

(4) Recipients have four years to complete course work for a master's degree, teaching endorsement, or approved graduate program.

(5) Upon completion of the master's degree, teaching endorsement, or approved graduate program, a recipient shall notify the USOE and provide an official higher education transcript or appropriate documentation.

(6) Recipients of the Advancement Awards shall notify the USOE immediately if they change public education employers, drop their class loads below 3 credit hours or move from the state.

(7) If the recipient interrupts employment for any reason, the recipient shall submit a formal written letter to the PEJEP Committee explaining the reason for the interruption and requesting a continuance of the contract.

B. Award and Funding Requirements for Advancement Awards

To be eligible to receive an award under this rule, an educator shall:

(1) be approved by the employing principal and the school district superintendent or designee or a charter school director and charter school board chair;

(2) be a fully licensed Utah educator or enrolled in a Utah alternative educator licensing program.

(3) agree to enroll in eligible schools or programs ~~within one year from the date of~~ at the first possible enrollment opportunity following the award;

(4) use the award only at a Utah public or private accredited higher education institution; exceptions may be made by the PEJEP Committee on a case by case basis for compelling circumstances;

([4]5) provide documentation to the PEJEP Committee of acceptance into an approved graduate program, including National Board Certification, leading to a master's degree or teaching endorsement in areas identified under R690-100-1C;

([5]6) not use the award to pay for course work in counseling or administration.

C. Additional Recipient Requirements for Advancement Awards; a recipient shall:

(1) complete the program within four years from the date of initial enrollment.

(2) complete endorsement classes in a timely manner as approved in the contract with the PEJEP Committee.

(3) successfully complete (2.0 average or better) all classes for which recipient is reimbursed.

(4) enroll and seek reimbursement only for courses leading directly to a master's degree, teaching endorsement, or approved graduate program, for which the award was made.

(5) show evidence of progress toward master's degree, teaching endorsement, or approved graduate program, every semester for which the award is used.

(6) commit to teach in Utah public schools in an area identified in 53A-1a-601(1) for a period of four consecutive school years following the completion of the endorsement or degree for which the award was made.

(7) notify the USOE if a recipient of an Advancement Award ends school district employment.

(8) notify the USOE if an Advancement Award recipient has his teaching assignment changed to less than 50 percent of his assignment in the area that qualified the teacher for the award.

(9) notify the USOE of any other award or scholarship or special compensation that an award recipient is receiving, to the best of the employer's information, from another source.

(10) be eligible for an Advancement Award if the recipient provides instruction to students in any public school setting, including secure facilities with education components under the control and supervision of the public school system.

D. Award Priorities for Advancement Awards

(1) Superintendent/principal recommendations

(2) Existing formal qualifications, evaluations, degrees, certificates, endorsements, licenses of educators in district/school.

(3) Applicants' discussions of career plans, educational objectives, and estimated time periods for completion of course work.

(4) Alignment of applicant career/educational objectives with intent and express purposes of Section 53A-1a-601.

KEY: scholarships, awards, educators

Date of Enactment or Last Substantive Amendment:
[December 8, 2008]2009

Authorizing, and Implemented or Interpreted Law:
53A-1a-602(5)

Workforce Services, Employment Development **R986-700** Child Care Assistance

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33017

FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for this amendment is to make the rule for disqualifying a family provider match, as much as possible, the rules for disqualifying a licensed provider.

SUMMARY OF THE RULE OR CHANGE: Currently, if a provider receives funds but does not provide child care during the month, the rules require the provider be removed from the approved provider list. Sometimes a provider is not completely at fault and needs time to repay the overpayment. These changes will allow up to six months to repay the overpayment during which the provider can remain an approved provider. This matches the procedure where a provider removes funds that were not authorized. Additionally, this proposed amendment changes the criminal convictions that will disqualify a friend and family provider to match the criminal convictions used by the Department of Health to disqualify licensed providers. This is due to changes made by the Department of Health to its rules. The disqualification reasons should be the same, as much as possible, for both types of providers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-310.5 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to any local government.

♦ **SMALL BUSINESSES:** This is a federally-funded program and there will be no costs or savings to any small business. Child care providers will be given longer to repay overpayments. Family providers may be disqualified for certain types of serious crimes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This will have no impact on any other persons. Some family child care providers may be disqualified in the future based on a criminal conviction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2009

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider

removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

(5) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized funds were accepted from a client or taken as provided in this section but no CC services were provided during the month, the Department will send a demand letter to the provide establishing the overpayment and the provider will be given 30 days repay the Department or enter into an installment payment agreement. Under an installment agreement, the provider must agree to make monthly payments and pay the full amount within a maximum of six months of the date of the demand letter. If full payment is not received within six months, the provider may be referred for criminal prosecution and will no longer be an approved provider as provided under R986-700-706(4). This is true even if the provider has never removed or retained CC funds in the past.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), 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 or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), 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 misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

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

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

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

([e]j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

([d]k) 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~~

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

([e]l) 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.~~

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

KEY: child care

Date of Enactment or Last Substantive Amendment: [~~July 2, 2008~~]2009

Notice of Continuation: September 14, 2005

Authorizing, and Implemented or Interpreted Law: 35A-3-310

End of the Notices of Proposed Rules Section

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.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends November 16, 2009.

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 between paragraphs (.) indicates that unaffected text, either whole sections or subsections, 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.

From the end of the 30-day waiting period through February 12, 2010, an 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 the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. 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** by the end of the 120-day period after publication, 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 Section 63G-3-303; 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

Insurance, Administration
R590-79
Life Insurance Disclosure Rule

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 32697

FILED: 10/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to comments received from the insurance industry during the initial comment period, additional changes are being made to this rule.

SUMMARY OF THE RULE OR CHANGE: The substantive changes to this rule are in Subsection R590-79-5(B) which eliminates the requirement that a life insurer provide a policy summary with an illustrated policy. Subsection R590-79-5(C) eliminates wording describing a universal policy, which is already understood by those in the life insurance industry. (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, 2009, issue of the Utah State Bulletin, on page 44. Underlining in the rule below indicates text that has been added since the publication of the proposed new 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.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-22-425

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Life Insurance Buyer's Guide, published by National Association of Insurance Commissioners, 2000

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The changes to this rule will not require additional filings being made to the department and thus no additional work for the staff. Nor will the changes require licensees to pay additional fines or fees.
- ◆ **LOCAL GOVERNMENTS:** The changes to this rule will not affect local governments since the rule deals solely with the relationship between the department and their licensees, in this case, life insurance companies.
- ◆ **SMALL BUSINESSES:** This rule impacts life insurance companies, which are organizations of more than 50 employees. There should be no impact on small employers.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The main change is to eliminate the requirement for life

insurers to provide a one-page policy summary with an illustrated policy. The elimination of this requirement will make this rule uniform with the national standard and eliminate redundancy since an illustrated policy already provides a great deal more information than is provided on a one-page summary. This should have very little if any effect upon most insurers since they were not providing the summary and we were not enforcing this portion of the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The main change is to eliminate the requirement for life insurers to provide a one-page policy summary with an illustrated policy. The elimination of this requirement will make this rule uniform with the national standard and eliminate redundancy since an illustrated policy already provides a great deal more information than is provided on a one-page summary. This should have very little if any effect upon most insurers since they were not providing the summary and we were not enforcing this portion of the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on businesses in Utah.

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 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 NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-79. Life Insurance Disclosure Rule.

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R590-79-3. Scope.

Except as hereinafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any issuer of life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

- A. ~~[A]~~annuities~~[-];~~
- B. ~~[C]~~credit life insurance~~[-];~~
- C. ~~[G]~~group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements~~[-]~~. ~~I~~~~[#]~~these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy)~~[-];~~
- D. ~~[F]~~life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), as amended~~[-]; or~~
- E. ~~[V]~~variable life insurance under which the amount and duration of the death benefits and cash values vary according to the investment experience of a separate account.

R590-79-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. ~~[Buyer's Guide.]~~ A Buyer's Guide ~~[is]~~ means a document which contains, and is limited to, the language contained in the "Life Insurance Buyer's Guide," as adopted and amended by, and available from the National Association of Insurance Commissioners, 2000 edition, which is incorporated in this rule by reference.

B. Current Scale of Nonguaranteed Elements~~[-A]~~ means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

C. ~~[Generic Name.]~~ Generic name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

D. Nonguaranteed Elements~~[-The]~~ means the premiums, credited interest rates including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these~~[-]~~ that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying non-guaranteed elements are used in its calculation.

E. Policy Data~~[-A]~~ means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values; and endowment benefits.

F. ~~[Policy Summary.]~~
 (1) Policy summary means a written statement describing only the guaranteed elements of the policy.~~[-]~~ A policy summary must include the following information:

- (a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.
- (b) The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.
- (c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.
- (d) The generic name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the tenth and twentieth policy years, and at least one age from 60 through 65 or maturity, which~~[-]~~ever is earlier.

- (i) The annual premium for the basic policy.
- (ii) The annual premium for each optional rider.
- (iii) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.
- (iv) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.
- (v) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual percentage rate, and shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

- (g) The date on which the policy summary is prepared.
- (2) The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item F.(1)(e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and may not be displayed as a blank space.

(3) If an illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, is used in the sale of a policy, a policy summary is not required.

G. Preneed Funeral Contract or Prearrangement~~[-An]~~ means an agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

R590-79-5. Disclosure Requirements.

A. The insurer shall provide~~[- to all prospective purchasers.]~~ a Buyer's Guide and either a policy summary or a life illustration that is in compliance with Rule R590-177, Life Insurance Illustrations Rule, when the policy is delivered or prior to delivery of the policy if so requested.

B. The insurer shall provide a Buyer's Guide ~~[and a policy summary]~~ to any prospective purchaser upon request.

C. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance~~[- policies.]~~" and similarly structured policies ~~[which:~~

~~(1) Permit the policy owner to vary, independently of each other, the amount or timing of premium payments, or the amount payable on death; and~~

~~(2) Provide for a cash value that is based on separately identified interest credits and mortality and expense charges made to the policy.~~

~~All indexes and other data shall be displayed assuming specific schedules of anticipated premiums and death benefits at issue.~~

~~In addition to all other information required by this rule],~~ the policy summary shall indicate when the policy will expire based on the interest rates and mortality rates and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

D. Requirements applicable to existing policies.

Upon request by the policyholder, the insurer shall furnish either policy data or an in force illustration as follows:

(1) For policies issued prior to January 1, 1997, the effective date of R590-177, Life Insurance Illustrations Rule, the insurer shall furnish policy data, or at its option, an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule.

(2) For policies issued on or after January 1, 1997 that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule.

(3) If the policy was issued on or after January 1, 1997, and declared to be used with an illustration, an in force illustration shall be provided.

(4) Unless otherwise requested, the policy data shall be provided for 20 consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request. The insurer may charge a reasonable fee for the preparation of the statement after providing one annually without charge.

E. Preneed Funeral Contracts or Prearrangements. The following information shall be adequately disclosed at the time an application is made prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement which is funded or to be funded by a life insurance policy:

(1) The fact that a life insurance policy is involved or being used to fund a prearrangement;

(2) The nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The impact on the prearrangement:

(a) of any changes in the life insurance policy including but not limited to changes in the assignment, beneficiary designation or use of the proceeds;

(b) of any penalties to be incurred by the policyholder as a result of failure to make premium payments; and

(c) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(5) A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

(7) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee;

(8) The fact that a sales commission or other form of compensation is being paid and if so, the identity of such individuals or entities to whom it is paid.

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KEY: insurance law

Date of Enactment or Last Substantive Amendment: 2009

Notice of Continuation: September 27, 2004

Authorizing, and Implemented or Interpreted Law: 31A-2-201

**Insurance, Administration
R590-177
Life Insurance Illustrations Rule**

**NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 32698
FILED: 10/01/2009**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Additional changes are being made to the rule in order to adopt suggestions made during the initial comment period.

SUMMARY OF THE RULE OR CHANGE: In Section R590-177-3, the dollar amount at which a policy illustration is required is being changed from \$15,000 to the original amount of \$10,000. The changes in Subsection R590-177-11(C)(6)(c) are being made for consistency with Subsection R590-177-4(k)(1)(c) of this rule. Subsection R590-177-11(H) is being changed back to the way it was. It was determined that it was easier to remember to notify the department at the time the illustration actuary is changed rather than when the insurer makes its next filing. (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, 2009, issue of the Utah State Bulletin, on page 48. Underlining in the rule below indicates text that has been added since the publication of the proposed new 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.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-22-425 and Section 31A-23a-402

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The additional changes to this rule will not require additional filings for the department and thus no additional work nor will the changes require the department's licensees to pay additional fines or fees.
- ◆ LOCAL GOVERNMENTS: The changes to this rule will not affect local governments since the rule deals only with the relationship between licensed life insurers and the insurance department.
- ◆ SMALL BUSINESSES: This rule impacts life insurance companies, which are organizations of more than 50 employees. There should be no impact on small employers.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In Section R590-177-3, the dollar amount at which an illustration is required to accompany the policy is being changed from \$15,000 back to the original amount of \$10,000 to maintain the national standard. This should have very little if any impact on insurers required to provide these illustrations since so few policies have a face value as low as \$10,000 to \$15,000. Essentially all life policies have higher values and are required to be accompanied by an illustration when given to the insured.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In Section R590-177-3, the dollar amount at which an illustration is required to accompany the policy is being changed from \$15,000 back to the original amount of \$10,000 to maintain the national standard. This should have very little if any impact on insurers required to provide these illustrations since so few policies have a face value as low as \$10,000 to \$15,000. Essentially all life policies have higher values and are required to be accompanied by an illustration when given to the insured.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule should have very little, if any, fiscal impact on Utah businesses.

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 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 NO LATER THAN AT 5:00 PM ON 11/16/2009

THIS RULE MAY BECOME EFFECTIVE ON: 11/23/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-177. Life Insurance Illustrations Rule.

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R590-177-3. Applicability and Scope.

- A. This rule applies to all group and individual life insurance policies and certificates except:
 - (1) variable life insurance;
 - (2) individual and group annuity contracts;
 - (3) credit life insurance; or
 - (4) life insurance policies with no illustrated death benefits on any individual exceeding [~~\$15,000~~]\$10,000.
- B. The provisions of this rule apply to policies sold on or after January 1, 1997.

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R590-177-11. Annual Certifications.

- A. The board of directors of each insurer shall appoint one or more illustration actuaries.
- B. The illustration actuary shall certify that:
 - (1) the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice No. 24, Compliance with the NAIC Life Insurance Illustrations Model Regulation promulgated by the Actuarial Standards Board, [] and [~~that~~]
 - (2) the illustrated scales used in insurer-authorized illustrations meet the requirements of this rule.
- C. The illustration actuary shall:
 - (1) be a member in good standing of the American Academy of Actuaries;
 - (2) be familiar with the standard of practice regarding life insurance policy illustrations;
 - (3) not have been found by the commissioner, following appropriate notice and hearing, to have:
 - (a) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of dealings as an illustration actuary;
 - (b) been found guilty of fraudulent or dishonest practices;
 - (c) demonstrated incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(d) resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(4) not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under Subsection (3) above;

(5) disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this shall be disclosed in the annual certification; and

(6) disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

- (a) fully allocated expenses;
- (b) marginal expenses; or
- (c) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner.

D.(1) The illustration actuary shall file a certification with the board:

- (a) annually for all policy forms for which illustrations are used; and
- (b) before a policy form is illustrated.

(2) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

E. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of the inability to certify.

F. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(1) that the illustration formats meet the requirements of this rule and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) that the company has provided its producers with information about the expense allocation method used by the company in its illustrations and disclosed as required in Subsection C(6) of this section.

G. The annual certifications shall be completed each year by a date determined by the insurer. The certifications shall be maintained by the insurer for a period of 5 years and be available for inspection by the commissioner.

H. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner and disclose the reason for the change. ~~[The notification shall be included as a supporting document with the insurer's next submitted form filing.]~~

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KEY: insurance
Date of Enactment or Last Substantive Amendment: 2009
Notice of Continuation: March 31, 2006
Authorizing, and Implemented or Interpreted Law: 31A-23-302

End of the Notices of Changes in Proposed Rules Section

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 agency is required to review the rule. This review is intended 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 upon filing.

NOTICES are governed by Section 63G-3-305.

Administrative Services, Records Committee **R35-1** State Records Committee Appeal Hearing Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32988
FILED: 09/23/2009

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: Pursuant to Section 63G-2-502, the State Records Committee may make rules to govern its proceedings. This rule explains in detail the procedures to be followed for a hearing before the State Records Committee.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary for the Committee to have procedures for the hearing process so both the Committee members and the participants in the hearing can know what time frames are expected and what to anticipate during a State Records Committee hearing. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Patricia Smith-Mansfield, Director

EFFECTIVE: 09/23/2009

Administrative Services, Records Committee **R35-2** Declining Appeal Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32989
FILED: 09/23/2009

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: Pursuant to Subsection 63G-2-403(b), the Executive Secretary may decline to

schedule a hearing if the Committee has had a previous hearing in which the same record series was found to be properly classified. Rule R35-2 explains the procedures the Executive Secretary must follow for declining an appeal hearing.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary so the Executive Secretary and the Committee members are aware of the process for declining an appeal hearing. The rule also allows for a report of declined hearings so Committee members may choose to reverse the decision to decline an appeal. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Patricia Smith-Mansfield, Director

EFFECTIVE: 09/23/2009

**Administrative Services, Records
 Committee
 R35-3
 Prehearing Conferences**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 32990
 FILED: 09/23/2009**

**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: Pursuant to Subsection 63G-2-502(a), the State Records Committee may make rules to govern its proceedings. This rule explains the procedures for a prehearing conference before the State Records Committee.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows for prehearing conferences between the State Records Committee chair or a member appointed by the chair, the petitioner, and a representative from the governmental entity to encourage communication between parties and to facilitate settlement of the appeal. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Patricia Smith-Mansfield, Director

EFFECTIVE: 09/23/2009

**Administrative Services, Records
 Committee
 R35-4
 Compliance with State Records
 Committee Decisions and Orders**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 32991
FILED: 09/23/2009

**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: Pursuant to Subsection 63G-2-502(a), the State Records Committee may make rules to govern its proceedings. This rule outlines the procedures followed by a governmental entity complying with the decision and order of the State Records Committee.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule explains the procedures for a governmental entity to follow in order to be in compliance with the order of the State Records Committee. It also allows the committee to enforce their order if there is noncompliance from a governmental agency. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Patricia Smith-Mansfield, Director

EFFECTIVE: 09/23/2009

**Subpoenas Issued by the Records
Committee**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 32992
FILED: 09/23/2009

**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: Pursuant to Subsection 63G-2-502(a), the State Records Committee may make rules to govern its proceedings. This rule provides the procedures to be followed by the petitioner and the State Records Committee concerning subpoenas.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R35-5 outlines the procedures followed by the petitioner when requesting a subpoena be issued. This rule outlines the procedures to be followed by the State Records Committee Chair when denying or granting the request. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Patricia Smith-Mansfield, Director

EFFECTIVE: 09/23/2009

**Administrative Services, Records
Committee
R35-5**

**Administrative Services, Records
Committee
R35-6
Expedited Hearing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 32994
FILED: 09/23/2009

**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: Pursuant to Subsection 63G-2-502(2), the State Records Committee may make rules to govern its proceedings. This rule outlines the procedure for an expedited hearing.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary so the petitioner, the governmental entity, and the State Records Committee will know the procedure for requesting and scheduling an expedited hearing. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

AUTHORIZED BY: Patricia Smith-Mansfield, Director

EFFECTIVE: 09/23/2009

**Commerce, Occupational and
Professional Licensing
R156-31c
Nurse Licensure Compact Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 32983
FILED: 09/21/2009

**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: Title 58, Chapter 31c, provides for the Nurse Licensure Compact. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Section 58-31c-103 provides the Division may adopt rules necessary to implement the provisions of the chapter. This rule was enacted to clarify the provisions of Title 58, Chapter 31c, with respect to the Nurse Licensure Compact.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was last reviewed in 2004, it has been amended two times to update the rule so that it is consistent with the national model compact rule. No written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides an uniform manner in which implementation of the Nurse Licensure Compact (NLC) must be done. The rule adheres to the model compact rule developed by the Nurse Licensure Compact administrators and allows Utah to continue to participate in the Nurse Licensure Compact.

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:

♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

AUTHORIZED BY: Mark Steinagel , Director

EFFECTIVE: 09/21/2009

Health, Community and Family Health Services, Children with Special Health Care Needs

R398-5

Birth Defects Reporting

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33001

FILED: 09/28/2009

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: This rule is authorized by Subsections 26-1-30(2)(c), (d), (e), (g), (p), (t) and 26-10-1(2), and Sections 26-10-2 and 26-25-1, which authorize the Department of Health to collect information that impacts the public health. Birth defects impact on public health and this rule establishes reporting requirements for birth defect reporting in Utah.

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 in the during the past five-year period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Birth defects occur in 1 of every 33 babies born in Utah and are the leading cause of infant mortality. Birth defects also contribute to premature births and are the major reason for hospitalizations during the first year of life. There are economic costs to families and society for children born with birth defects and the costs extend beyond the medical and surgical care to behavioral and educational service issues. Increasing the number of babies born without birth defects will reduce family, third party payer, and societal costs. Approximately 80% of birth defects have no known cause. Because the majority of babies born with birth defects

have no identifiable cause, more epidemiology studies are necessary. The ultimate goal of the rule is to prevent birth defects and increase the number of babies born healthy in Utah. Evaluation of the epidemiological data provides information in order to assess risk factors and develop primary prevention strategies directed at reducing these factors. Implementation of the primary prevention activities targeted at both high risk populations and women in their childbearing years in Utah will reduce the occurrence of birth defects, which must be evaluated through the continuous tracking of all major birth defects statewide. Therefore, this rule should be continued.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
CHILDREN WITH SPECIAL HEALTH CARE NEEDS
44 N MARIO CAPECCHI DR
SALT LAKE CITY, UT 84113
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Holly Williams by phone at 801-584-8202, by FAX at 801-584-8488, or by Internet E-mail at hollywilliams@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 09/28/2009

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1B

Prohibition of Payment for Certain Abortion Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32996

FILED: 09/23/2009

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, Section 76-7-331 requires the Department to comply with the prohibition on using public funds for certain abortion services.

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 or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to assure compliance with the prohibition on using public funds for certain abortion services.

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:
♦ Kimi McNutt by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at kmcnutt@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 09/23/2009

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 or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it outlines eligibility requirements, access requirements, service coverage, and reimbursement for Medicaid clients receiving home health services.

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:
♦ Kimi McNutt by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at kmcnutt@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 09/23/2009

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-14
Home Health Services

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 32997
FILED: 09/23/2009

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, 42 CFR 440.70 authorizes the Department to govern home health services.

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-14A
Hospice Care

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33005
FILED: 09/30/2009

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, 42 USC 1396d(o) authorizes the Department to implement Medicaid hospice care services.

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 or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it outlines hospice care services for Medicaid eligible clients.

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:

♦ Kimi McNutt by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at kmcnutt@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 09/30/2009

Insurance, Administration
R590-229
Annuity Disclosure

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 32985
FILED: 09/22/2009

**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: This rule was written under the authority of Subsection 31A-2-201(3)(a) authorizing the commissioner to write rules to implement Title 31A, the Insurance Code. Also, Section 31A-22-425 authorizes the commissioner to write rules establishing standards for buyer's guides and disclosures. Section R590-229-5 of the rule provides direction for appropriate buyer's guides and Section R590-229-6 sets the standards for disclosure documents.

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 received no written comments regarding this rule within the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department needs to continue this rule in force in order to provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying the minimum information to be disclosed and the method of disclosing it in connection with the sale of annuity contracts. The rule also fosters consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts. The latter information is available in the buyer's guides referred to in this rule.

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 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: 09/22/2009

Labor Commission, Industrial Accidents
R612-8
**Procedural Guidelines for the
Reemployment Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 32982
FILED: 09/17/2009

**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 34A-8a-202 and 34A-8A-301 give the Utah Labor Commission authority to establish rules to administer the Utah Injured Worker Reemployment 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 the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the Commission's continuing responsibility to administer Utah's workers' compensation system and to monitor reemployment of injured workers, it remains necessary for the Commission to set forth guidelines for the reporting of information regarding reemployment efforts. This rule is necessary to establish standards for such

reporting requirements. Therefore, this rule should be continued.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
♦ Larry Bunkall by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 09/17/2009

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

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

**Health, Community and Family Health
Services, Children with Special Health
Care Needs
R398-5
Birth Defects Reporting**

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 32987
FILED: 09/22/2009

EXTENSION REASON AND NEW DEADLINE: The agency requested an extension for the five-year review to allow full review of the changes before the deadline. New deadline: 01/20/2010. (DAR NOTE: See five-year review under DAR No. 33001 in this issue, October 15, 2009, of the Bulletin.)

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Holly Williams by phone at 801-584-8202, by FAX at 801-584-8488, or by Internet E-mail at hollywilliams@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 09/22/2009

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses and the agency must start the rulemaking process over.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Agriculture and Food

Animal Industry

No. 32784 (AMD): R58-21. Trichomoniasis

Published: 08/01/2009

Effective: 09/22/2009

Environmental Quality

Drinking Water

No. 32806 (AMD): R309-100. Administration: Drinking Water Program

Published: 08/01/2009

Effective: 09/24/2009

No. 32807 (AMD): R309-105. Administration: General Responsibilities of Public Water Systems

Published: 08/01/2009

Effective: 09/24/2009

No. 32808 (AMD): R309-110. Administration: Definitions

Published: 08/01/2009

Effective: 09/24/2009

No. 32809 (AMD): R309-200. Monitoring and Water Quality: Drinking Water Standards

Published: 08/01/2009

Effective: 09/24/2009

No. 32810 (AMD): R309-205. Monitoring and Water Quality: Source Monitoring Requirements

Published: 08/01/2009

Effective: 09/24/2009

No. 32811 (AMD): R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements

Published: 08/01/2009

Effective: 09/24/2009

No. 32812 (AMD): R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements

Published: 08/01/2009

Effective: 09/24/2009

No. 32813 (AMD): R309-220. Monitoring and Water Quality: Public Notification Requirements

Published: 08/01/2009

Effective: 09/24/2009

No. 32814 (AMD): R309-225. Monitoring and Water Quality: Consumer Confidence Reports

Published: 08/01/2009

Effective: 09/24/2009

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 32840 (AMD): R414-1-5. Incorporations by Reference

Published: 08/15/2009

Effective: 10/01/2009

No. 32860 (AMD): R414-33B-5. Service Coverage

Published: 08/15/2009

Effective: 09/30/2009

No. 32861 (AMD): R414-33C-5. Service Coverage

Published: 08/15/2009

Effective: 09/30/2009

No. 32862 (AMD): R414-33D-5. Service Coverage

Published: 08/15/2009

Effective: 09/30/2009

No. 32841 (AMD): R414-54-3. Services

Published: 08/15/2009

Effective: 10/01/2009

No. 32842 (AMD): R414-59-4. Client Eligibility Requirements

Published: 08/15/2009

Effective: 10/01/2009

No. 32859 (AMD): R414-306. Program Benefits

Published: 08/15/2009

Effective: 10/01/2009

Human Resource Management

Administration

No. 32724 (AMD): R477-1. Definitions
Published: 07/01/2009
Effective: 10/01/2009

No. 32727 (AMD): R477-2. Administration
Published: 07/01/2009
Effective: 10/01/2009

Human Services

Recovery Services

No. 32676 (AMD): R527-301. Non-IV-D Income Withholding
Published: 06/15/2009
Effective: 10/01/2009

Insurance

Administration

No. 32799 (REP): R590-101. Appointment and Termination of Individuals licensed as Agents, and Organizations Licensed as Agents by Insurers
Published: 08/01/2009
Effective: 09/28/2009

No. 32850 (AMD): R590-102. Insurance Department Fee Payment Rule
Published: 08/15/2009
Effective: 09/28/2009

No. 32800 (REP): R590-123. Additions and Deletions of Designees by Organizations
Published: 08/01/2009
Effective: 09/28/2009

No. 32801 (REP): R590-141. Individual and Agency License Lapse and Reinstatement
Published: 08/01/2009
Effective: 09/28/2009

No. 32865 (AMD): R590-171. Surplus Lines Procedures Rule
Published: 08/15/2009
Effective: 09/28/2009

Natural Resources

Forestry, Fire and State Lands

No. 32853 (AMD): R652-20. Mineral Resources
Published: 08/15/2009
Effective: 09/23/2009

Public Service Commission

Administration

No. 32867 (AMD): R746-100-16. Use of information Claimed to Be Confidential in Commission Proceedings
Published: 08/15/2009
Effective: 09/23/2009

No. 32851 (AMD): R746-360-4. Application of Fund Surcharges to Customer Billings
Published: 08/15/2009
Effective: 11/01/2009

No. 32866 (NEW): R746-700. Complete Filings for General Rate Case and Major Plant Addition Applications
Published: 08/15/2009
Effective: 09/23/2009

Regents (Board of)

University of Utah, Administration

No. 32713 (NEW): R805-3. Overnight Camping and Campfires on University of Utah Property
Published: 07/01/2009
Effective: 09/18/2009

Tax Commission

Administration

No. 32824 (AMD): R861-1A-41. Date of Assessment Pursuant to Utah Code Ann. Sections 59-1-302.1 and 59-1-706
Published: 08/01/2009
Effective: 09/17/2009

No. 32794 (AMD): R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404
Published: 08/01/2009
Effective: 09/17/2009

Auditing

No. 32852 (AMD): R865-4D-2. Refund Procedures for Special Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-304
Published: 08/15/2009
Effective: 09/21/2009

No. 32792 (AMD): R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701
Published: 08/01/2009
Effective: 09/17/2009

No. 32788 (AMD): R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703
Published: 08/01/2009
Effective: 09/17/2009

No. 32793 (AMD): R865-9I-13. Non-Resident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-1405
Published: 08/01/2009
Effective: 09/17/2009

No. 32795 (AMD): R865-9I-55. Qualified Subchapter S
Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403
Published: 08/01/2009
Effective: 09/17/2009

No. 32789 (AMD): R865-9I-56. Determination of Amounts
Withheld by a Pass-Through Entity that is an S Corporation
Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117,
59-10-118, 59-10-1403.2 and 59-10-1405
Published: 08/01/2009
Effective: 09/17/2009

No. 32791 (AMD): R865-12L-17. Procedures for the
Administration of the Tourism, Recreation, Cultural and
Convention Facilities Tax Pursuant to Utah Code Ann.
Sections 59-12-602 and 59-12-603
Published: 08/01/2009
Effective: 09/17/2009

No. 32785 (AMD): R865-19S-58. Materials and Supplies
Sold to Owners, Contractors and Repairmen of Real Property
Pursuant to Utah Code Ann. Sections 59-12-102 and
59-12-103
Published: 08/01/2009
Effective: 09/17/2009

No. 32796 (AMD): R865-19S-107. Reporting of Exempt
Sales or Purchases Pursuant to Utah Code Ann. Section
59-12-105
Published: 08/01/2009
Effective: 09/17/2009

No. 32825 (REP): R865-25X. Brine Shrimp Royalty
Published: 08/01/2009
Effective: 09/17/2009

Motor Vehicle Enforcement
No. 32790 (AMD): R877-23V-8. Signs and Identification
Pursuant to Utah Code Ann. Section 41-3-105
Published: 08/01/2009
Effective: 09/17/2009

No. 32786 (AMD): R877-23V-12. Documents Required Prior
to Issue of a License Pursuant to Utah Code Ann. Section
41-3-105
Published: 08/01/2009
Effective: 09/17/2009

Property Tax
No. 32822 (AMD): R884-24P-33. 2009 Personal Property
Valuation Guides and Schedules Pursuant to Utah Code Ann.
Section 59-2-301
Published: 08/01/2009
Effective: 09/17/2009

Technology Services
Administration

No. 32704 (AMD): R895-6. IT Plan Submission Rule for
Agencies
Published: 07/01/2009
Effective: 09/16/2009

Transportation

Operations, Construction
No. 32863 (NEW): R916-5. Health Reform -- Health
Insurance Coverage in State Contracts -- Implementation
Published: 08/15/2009
Effective: 09/21/2009

Workforce Services

Employment Development
No. 32864 (AMD): R986-200-218. Exceptions to the Time
Limit
Published: 08/15/2009
Effective: 10/01/2009

No. 32857 (AMD): R986-400. General Assistance and
Working Toward Employment
Published: 08/15/2009
Effective: 09/22/2009

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, 2009, including notices of effective date received through October 01, 2009. 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 is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: <http://www.rules.utah.gov/research.htm>

Questions regarding the index and the information it contains should be addressed to 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/>).
