

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed February 01, 2014, 12:00 a.m. through February 14, 2014, 11:59 p.m.

Number 2014-5
March 01, 2014

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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <http://www.rules.utah.gov/publicat/bulletin.htm>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

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, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. 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)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Division of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

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SPECIAL NOTICES

Crime Victim Reparations Administration

Public Notice Regarding the Emergency Rule Filing on Section R270-1-13 Published in the February 1, 2014, Bulletin

MEMORANDUM

TO: Kenneth A. Hansen, Director

FROM: Gary Scheller, Director
Utah Office for Victims of Crime

DATE: February 21, 2014

Because of a Legislative one time emergency funding in the amount of \$877,000, authorized for the purpose of repealing the 20% emergency reduction, the emergency rule published under DAR No. 38221 in the February 1, 2014, Bulletin is no longer effective as of February 24, 2014.

Health Health Care Financing, Coverage and Reimbursement Policy Nurse Practitioner Services

The Division of Medicaid and Health Financing (DMHF) will submit a change to the Medicaid State Plan through [SPA 14-010-UT, Nurse Practitioner Services](#). The purpose of this amendment is to facilitate client access to health care throughout Utah and to clarify limitations on nurse practitioner services. This amendment, therefore, allows licensed nurse practitioners to directly bill Medicaid for payment of approved services, and specifies which practitioners may perform these services.

DMHF does not anticipate an impact on total annual expenditures because this amendment is anticipated to only facilitate access to care which would not necessarily increase expenditures.

The proposed effective date of this change is April 1, 2014, and is pending Centers for Medicare and Medicaid Services approval.

A copy of the change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, PO Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the change are also available at local county health department offices.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between February 01, 2014, 12:00 a.m., and February 14, 2014, 11:59 p.m. are included in this, the March 01, 2014, 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 (example). Deletions made to existing rules are struck out with brackets surrounding them ([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 usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may 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 March 31, 2014. 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 June 29, 2014, 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.

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, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Agriculture and Food, Animal Industry
R58-3
 Brucellosis Vaccination Requirements

350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 38294
 FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to make this section consistent with Rule R58-1 Import Requirements.

SUMMARY OF THE RULE OR CHANGE: This change adds the definition of "Brucellosis Technician" and removes exemption of dairy cattle.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-31-109 and Subsection 4-2-2(1)(c)(i) and Subsection 4-2-2(1)(j)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Owners are responsible to have their own animals vaccinated and therefore will have no financial impact on the state budget.
- ◆ **LOCAL GOVERNMENTS:** Owners are responsible to have their own animals vaccinated and therefore will have no financial impact on local government.
- ◆ **SMALL BUSINESSES:** Producers will have to pay to vaccinate the animals and the cost is between \$4 to \$6 per head.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other entity should be financially impacted by owners having their animal vaccinated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Most producers already vaccinate their replacement heifers. For those who are not already vaccinating, the additional cost will be \$4 per head.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is good management practice to vaccinate all replacement female cattle for brucellosis. The vast majority of cattle owners already vaccinate for this disease. At a cost of \$4 to \$6 per head, preventing this disease from entering Utah will far outweigh the costs of dealing with the disease once it is here.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 ANIMAL INDUSTRY

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
 ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
 ◆ Warren Hess by phone at 801-538-4910, by FAX at 801-538-7169, or by Internet E-mail at wjhess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

R58. Agriculture and Food, Animal Industry.
R58-3. Brucellosis Vaccination Requirements.
R58-3-1. Authority.

- (1) Promulgated under the authority of section 4-31-109 and Subsections 4-2-2(1)(c)(i), 4-2-2(1)(j).
- (2) It is the intent of this rule to state the brucellosis vaccination requirements for cattle and bison within Utah.

R58-3-2. Definitions.

- (1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.
- (2) "Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.
- ~~(3) "Cattle" means all domestic bovine (genus Bos).~~
- ~~(4) "Official USDA vaccination tag" means a metal identification eartag that provides unique identification for each individual animal by conforming to the nine (9)-character alpha-numeric national uniform eartagging system or any other unique identification device approved by the United States Department of Agriculture.~~
- ~~(5) "RFID" means a radio frequency identification device used as individual identification of livestock.~~
- (3) "Brucellosis Technician" means an individual approved and trained by the State Veterinarian or designee to administer Brucella abortus vaccine and appropriately identify the animal.
- (4) "Cattle" means all domestic bovine (genus Bos).
- (5) "Official USDA vaccination tag" means a metal identification eartag that provides unique identification for each individual animal by conforming to the nine (9)-character alpha-numeric national uniform eartagging system or any other unique

identification device approved by the United States Department of Agriculture.

(6) "RFID" means a radio frequency identification device used as individual identification of livestock.

R58-3-3. Utah Cattle and Bison Vaccination Requirements.

(1) All Utah [beef]cattle and bison heifers intended for replacement breeding animals must be vaccinated against Brucella abortus.

(2) Vaccination of [beef]cattle and bison heifer calves shall be administered by an accredited veterinarian or by a brucellosis technician.

(3) All [beef]cattle and bison heifers shall be vaccinated with strain RB-51 administered between 4 and 12 months of age. These heifers shall be properly identified by official tattoos and ear tag (either official USDA vaccination tag or RFID of approved design) and shall be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

(4) [Beef-e]Cattle and bison heifers not intended for replacement breeding are exempt from the vaccination requirement in subsection R58-3-3(1[2]).

KEY: brucellosis, vaccination, cattle, bison

Date of Enactment or Last Substantive Amendment: [~~October 29, 2012~~2014]

Authorizing, and Implemented or Interpreted Law: 4-31-109; 4-2-2(1)(c)(i); 4-2-2(1)(j)

**Agriculture and Food, Marketing and
Development
R65-12
Utah Small Grains and Oilseeds
Marketing Order**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38287

FILED: 02/11/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish a marketing order for small grains and oilseeds producers.

SUMMARY OF THE RULE OR CHANGE: Based on discussion by the Utah Conservation Commission and Agriculture Advisory Board, and Agriculture Advisory Board, an exploratory committee of five producers, one grain elevator spokesperson, a professor at Utah State University, and representative from the Utah Department of Agriculture and Food has met three times. Based on those meetings, the Committee and the Commissioner of Agriculture and Food are recommending the establishment of a Utah Small Grains and Oilseed Marketing Order. The marketing order would be funded by an assessment on all wheat, barley, safflower and

canola produced in Utah when it is sold. The assessment would be collected by the purchaser at the time of sale and submitted to the marketing board quarterly. The money would be managed by a five-person board of directors made up of producers appointed by the Commissioner and subject to the provisions of the order. The money is to be used to benefit all small grain and oilseed producers in the state by: 1) funding research to discover new varieties of wheat, other small grains, safflower and canola that producer better in Utah's topography and climate; 2) developing new and enhancing existing management practices to increase production; 3) providing education to producers on new varieties and management practices; and 4) developing new market opportunities and/or increase demand for Utah produced grains and oilseed. The establishment of the marketing order will require more than 50% of all registered and certified small grains and oilseed producers who return a ballot to vote in favor as per Section 4-2-2.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-2-2

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The cost would be limited to five percent of one state employee.

♦ **LOCAL GOVERNMENTS:** Local government would not be affected because they are not involved in the marketing order.

♦ **SMALL BUSINESSES:** Small businesses involved in the production of small grains and oil seeds would be subject to the marketing order assessment. Businesses involved in purchasing small grains and oil seeds would be required to collect the assessment and send to the marketing board quarterly.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons involved in the production of small grains and oil seeds are subjected to the assessment which is 3.5 cents per bushel of wheat and 7 cents per hundred weight for barley and oil seeds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons involved in the production of small grains and oil seeds are subjected to the assessment which is 3.5 cents per bushel of wheat and 7 cents per hundred weight for barley and oil seeds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The benefits to grain and oilseed producers far outweigh any cost that may be incurred by the producers or purchasers and the State of Utah. Yields per acre will generate more profitability and there will be increased economic activity in the State.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 MARKETING AND DEVELOPMENT
 350 N REDWOOD RD

SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jed Christenson by phone at 801-538-7108, by FAX at 801-538-7126, or by Internet E-mail at jedchristenson@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

R65. Agriculture and Food, Marketing and Development.

R65-12. Utah Small Grains and Oilseeds Marketing Order.

R65-12-1. Authority.

A. Promulgated under authority of Subsection 4-2-2(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the small grains and oilseeds producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the registered producers and handlers voting on the referendum. It is therefore ordered by the Commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah small grains and oilseed industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-12-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Small grains and oilseeds" means wheat, barley, safflower, canola and any other small grain or oilseed produced or to be produced in Utah.

D. "Producer" means a person owning or leasing cropland consisting of at least 40 acres producing grain and/or oilseed. E. "Registered producers" means producers who meet the minimum threshold of producing at least 40 acres of grain and/or oilseed for registration to vote on the referendum and have indicated that they want to be included in the marketing order voting process by certifying their eligibility to vote in the referendum.

F. "Handler" means an individual or an organization that purchases small grains or oilseed products.

G. "Purchase" means payment made to a producer by an individual or other entity.

R65-12-3. Board.

A. The Utah Small Grains and Oilseeds Board is hereby established consisting of five members of the small grains and oilseeds industry (no more than 2 individuals from the same county can serve simultaneously), plus up to two ex-officio non-voting members from Utah State University, the Utah Department of Agriculture and Food or farm organization of the Board's choice. An ex-officio non-voting member can serve as Secretary for the Board.

B. The original members of the Board shall be selected by the Commissioner.

C. Successors to original members shall be appointed by the Commissioner. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the Commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more than eight consecutive years without a break in term of at least one year.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah small grains and oilseeds producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Small Grains and Oilseeds Marketing Board,

3. to support, fund and/or conduct educational programs and advertising to promote grains, oilseeds and their products.

4. to support and/or fund research projects to improve the profitability of the Utah small grains and oilseeds industry.

5. to engage in any activity to promote the Utah small grains and oilseeds industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least once annually and more often as deemed necessary by the Board.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for members of the industry by the Small Grains and Oilseed Marketing Board.

R65-12-4. Provisions of the Order.

A. This order provides for:

1. Grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for small grains and oilseeds products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of grain and oilseed products in conformity with the regulations of the Commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the small grains and oilseeds industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per bushel of wheat sold (after all dockage has been deducted), and up to 10 cents per hundred weight on barley, safflower and canola sold (after all dockage has been deducted), to the Board quarterly. The discretionary assessment shall be set by majority vote of the Board, and approved by the Commissioner. The initial assessment shall be 3.5 cents per bushel on wheat and 7 cents per hundred weight on barley safflower and canola. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of the product. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. Only grains and oilseeds produced in Utah shall be assessed. The assessment of each producer shall be deducted from the producer's gross receipt by the purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Small Grains and Oilseeds Board. Failure of a purchaser or handler to collect and submit the assessment to the Board will result in a penalty to the purchaser or handler of two times the assessment amount. A purchaser or handler who collects the assessment but fails to submit payment to the Board is subject to a penalty equal to three times the assessment amount.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Handlers may be audited on a random basis as deemed necessary by the Board with results included in the annual audit. Copies of the annual audit shall be available to any contributor upon request.

4. The Board is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to this Order. Any funds remaining at the end of any year over and above the necessary expenses of said Board may be carried over to the next year, or divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year. If carry over funds exceed \$300,000 at the end of any fiscal year, with the

Commissioner's approval, the Board may suspend assessments of funds for the ensuing year or longer if deemed appropriate.

6. The Order shall become operational only if it is approved by at least 50 percent of the registered and certified producers and handlers voting in the referendum.

R65-12-5. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-12-6. Complaints for Violations - Producer.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-12-7. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he/she may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-12-8. Annual Meeting.

The Board shall meet at least annually and as often as the Board deems necessary.

KEY: promotions

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 4-2-2(1)(e)

Commerce, Occupational and
Professional Licensing
R156-22
Professional Engineers and
Professional Land Surveyors Licensing
Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38279

FILED: 02/10/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Professional Engineers and Professional Land Surveyors Board have reviewed the rule and determined that amendments need to be made to

improve uniformity with nationally accepted standards and requirements for professional engineers and professional land surveyors as recognized by the National Council of Examiners for Engineering and Surveying (NCEES).

SUMMARY OF THE RULE OR CHANGE: In Section R156-22-302b, this change clarifies that a foreign-educated engineer may correct any deficiencies in course work reflected by an NCEES credential evaluation. It also updates the education requirement for professional land surveyors in the same fashion. The current rule requires that applicants with deficiencies beyond those listed in Subsection R156-22-302(b)(1)(c) complete an entire new degree before qualifying for licensure. The proposed amendments make it possible for those applicants with educational deficiencies to correct them by completing individual classes rather than new degrees. Changes should result in a cost savings for some applicants. However, the Division is not able to determine an exact amount. In Section R156-22-302c, this change clarifies the verification of experience requirement of an applicant for licensure as an engineer when that verification is provided by an unlicensed individual. The change also provides that a professional land surveyor may receive qualifying experience for completion of a master's degree or doctorate degree in land surveying or geomatics. The current rule requires that all applicants complete four years of experience. The proposed changes would decrease the number of required hours of experience for applicants with a master's or doctorate degree in land surveying or geomatics. These changes will result in a cost savings for professional land surveyor applicants with a master's or doctorate degree in land surveying or geomatics. The average entry level salary for a land surveyor intern is \$40,000 per year. An intern with the minimum required education can expect the average internship to last four years at that same rate. Conversely, a land surveyor intern with a master's degree can expect a pay increase of \$12,000 per year upon successful completion of the third year of the internship and obtaining licensure. Similarly, a land surveyor intern with a doctorate degree can expect the same increase upon successful completion of the second year of the internship and obtaining licensure. It is assumed that the cost of obtaining an advanced degree will offset some of the savings. In Section R156-22-302d, the change removes the experience requirement prior to sitting for the Principles and Practice of Engineering Examination (PE) and the Principles and Practice in Surveying Examination (PS). The changes may result in a cost savings for some applicants as they are able to take the examinations upon successful completion of their education and passing of the Fundamentals Examinations respectively. As such, the rate of passing the Principles and Practice Exams on the first attempt is expected to be much higher, thereby alleviating additional costs incurred by prospective licensees for supplementary education or preparatory study classes. The change potentially would also make the applicant more valuable to prospective employers as they would be recruiting an individual that has already successfully completed the exams. However, the Division is not able to estimate these cost savings. In Section R156-22-304, the change clarifies

the Continuing Education (CE) requirement by including the terms "ethics", "business", and "technical content" which provide direction as to the qualified CE topics that may be obtained to enhance the licensee's professional practice. The change also raises the required CE from 24 hours to 30 hours while maintaining the respective maximum credit ratios for teaching; preparing papers, articles or books; and serving on committees or in leadership roles for the development and improvement of the profession. Many of the local professional associations and societies recognize that with the ongoing increase of technology and innovation within the professions, this added education and training is becoming more essential to maintain industry expectations. Additionally, it assumes that Utah's professional engineer and surveyor applicants are among the most qualified to provide professional advice and service to the public. While it should not be the only reason for the change, it cannot be overlooked that 82 percent of the states, four of which surround Utah, require 30 hours of CE per biennial renewal period. This change would bring Utah current with the recognized national standard and into agreement with the NCEES model rules. In Section R156-22-305, the change clarifies the CE requirement needed to reactivate an inactive license. The change is needed to coincide with the CE requirement provided in Section R156-22-304. In Section R156-22-502, the change embodies the Board's request to include in full text a more detailed reworking of the NCEES model "Rules of Professional Conduct". The official NCEES model "Rules of Professional Conduct" were previously only incorporated by reference.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-22-201 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Rules of Professional Conduct, published by National Council of Examiners for Engineering and Surveying (NCEES), August 2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors, and applicants for licensure in those classifications. The proposed amendments may result in a cost savings for some applicants as they are able to take the corresponding Principles and Practices Examinations upon successful completion of their education and passing of the Fundamental

Examinations. The change would make the applicant more marketable to potential employers and allow the applicant to secure gainful employment much sooner. In addition, the changes would result in a cost savings for small business employers by allowing them to more timely identify qualified prospective employees who have successfully passed the Principles and Practice Examinations prior to completing an internship or garnering any design-specific experience. However, the Division is not able to estimate these savings. It should also be noted that companies, who may qualify as a small business, who provide continuing education courses to professional engineers, professional structural engineers, and professional land surveyors may see an increase in business due to the additional six continuing education hours required of licensees every two years.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors, and applicants for licensure in those classifications. The proposed amendments will have a minimal cost to the affected persons beyond what is currently identified in statute and rule. The professional engineers and professional land surveyors should benefit from savings as a result of the changes corresponding to the experience requirements as referenced in Section R156-22-302d and the modifications related to correcting educational deficiencies as described in Section R156-22-302b. The continuing education change should have an overall positive impact for the professions with minimal cost to the applicant or licensee. Engineers and land surveyors currently expect to pay an average of \$15 to \$30 per CE credit, and this change equates to an increase of \$90 to \$180 for the additional six hours of CE per biennial renewal period for a biennial aggregate amount ranging from \$879,660 to \$1,759,320 for all currently licensed 9,774 professional engineers, professional structural engineers, and professional land surveyors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors, and applicants for licensure in those classifications. The proposed amendments will have a minimal cost to the affected persons beyond what is currently identified in statute and rule. The professional engineers and professional land surveyors should benefit from savings as a result of the changes corresponding to the experience requirements as referenced in Section R156-22-302d and the modifications related to correcting educational deficiencies as described in Section R156-22-302b. The Division, however, is not able to estimate an exact savings amount. The continuing education change should have an overall positive impact for the professions with minimal cost to the licensee. Engineers and land surveyors currently expect to pay an average of \$15 to \$30 per CE credit hour, and this change equates to an increase of \$90 to \$180 for the additional six hours of CE per biennial renewal period.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule analysis, this filing modifies education and experience requirements for licensure as an engineer or land surveyor. While some of the proposed modifications are anticipated to reduce the costs of licensure, others might have attendant costs; for example, those attendant to obtaining an advanced degree. Regardless, the fiscal impact is anticipated to affect individuals rather than businesses. This filing also increases the number of continuing education hours required to renew a license. The associated costs, which will vary, are expected to impact individuals rather than businesses. Finally, this filing adds specificity as to the activities that may constitute unprofessional conduct. Complying with these standards of conduct is not anticipated to pose a fiscal impact to individuals or businesses.

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:

◆ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 03/19/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 402 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.
R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard. ~~[Only d]Deficiencies in course work reflected in the credential evaluation~~~~[in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation]~~ may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor. In accordance with Subsection 58-22-302(3)(d), an applicant applying for licensure as a professional land surveyor shall verify completion of one of the following land surveying programs affiliated with an institution that is recognized by the Council for Higher Education Accreditation (CHEA) and approved by the Division in collaboration with the Board:

(a) an associates in applied science degree in land surveying or geomatics;

(b) a bachelors, masters or doctorate degree in land surveying or geomatics;

(c) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field relation to land surveying or geomatics comprised~~[an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or higher education degree and completion]~~ of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying or geomatics which shall include the following courses:

~~(a) i~~ [A] successful completion of a minimum of one course in each of the following content areas:

- ~~(i) A~~ boundary law;
- ~~(ii) B~~ writing legal descriptions;
- ~~(iii) C~~ photogrammetry;
- ~~(iv) D~~ public land survey system;
- ~~(v) E~~ studies in land records or land record systems; and
- ~~(vi) F~~ surveying field techniques; and[-]

~~(b) ii~~ [F] completion of the remainder of the 30 semester hours or 42 quarter hours ~~[may be made up of successful completion of courses]~~ from any or all of the following content areas:

~~(i) A~~ algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;

~~(ii) B~~ control systems;

~~(iii) C~~ drafting, not to exceed six semester hours or eight quarter hours;

~~(iv) D~~ geodesy;

~~(v) E~~ geographic information systems;

~~(vi) F~~ global positioning systems;

~~(vii) G~~ land development; and

~~(viii) H~~ survey instrumentation[-]; or

~~[-] (e) The degree and courses shall be completed in an education institution accredited by one of the following:~~

~~(i) Middle States Association of Colleges and Schools;~~

~~(ii) New England Association of Colleges and Schools;~~

~~(iii) North Central Association of Colleges and Schools;~~

~~(iv) Northwest Commission on College and Universities;~~

~~(v) Southern Association of Colleges and Schools; or~~

~~(vi) Western Association of Schools and Colleges.~~

(d) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics that does not include some of the course work specified in (c)(i) or (ii), or both, as part of the degree program, provided that the deficient requirements specified in (c)(i) or (ii), or both, have been completed post degree; and

~~(e) [F]if the degree was earned in a foreign country, the land surveying curriculum shall be determined by the NCEES Credential Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Education Standard. [Only d]Deficiencies in course work reflected in the credential evaluation~~~~[in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or land surveying, not to exceed a total of 10 semester hours noted by the credential evaluation,]~~ may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the Board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit:

~~(i) at least one verification [of qualifying experience] from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for, or~~

~~(ii) if a person verifying the applicant's credentials is not licensed in the profession:~~

~~(A) at least one verification from the unlicensed person;~~
~~and~~

~~(B) a written explanation as to why the unlicensed person is best qualified to verify the applicant's knowledge, ability and competence to practice in the profession applied for.~~

(k) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the Division in collaboration with the Board in accordance with the following:

(A) The qualifying experience shall be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the Board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) The qualifying experience shall be obtained after meeting the education requirements.

(c) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(d) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

- (A) steel;
- (B) concrete;
- (C) wood; or
- (D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(d), each applicant for licensure as a professional land surveyor shall submit verification of four years of full time or equivalent part time qualifying experience in land surveying obtained under the supervision of one or more licensed professional land surveyors which experience may be obtained before, during or after completing the education requirements for licensure. The experience shall be certified by the licensed professional land surveyor supervisor.

(b) The four years of qualifying experience shall comply with the following:

(i) two years of experience [~~should be~~]specific to field surveying with actual "hands on" surveying, including all of the following:

- (A) operation of various instrumentation;
- (B) review and understanding of plan and plat data;
- (C) public land survey systems;
- (D) calculations;
- (E) traverse;
- (F) staking procedures;

(G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) two years of experience [~~should be~~]specific to office surveying, including all of the following:

- (A) drafting (includes computer plots and layout);
- (B) reduction of notes and field survey data;
- (C) research of public records;
- (D) preparation and evaluation of legal descriptions; and
- (E) preparation of survey related drawings, plats and record of survey maps.

(c) A maximum of one year of qualifying experience may be granted for completion of a masters degree in land surveying or geomatics.

(d) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in land surveying or geomatics.

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination:

(A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering; or

(B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

(ii) the NCEES PE examination or the NCEES SE examination with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the license application form.

(b) If an applicant was approved by the Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant ~~[must have]~~ shall successfully complete ~~[d three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302e(1) after having successfully completed]~~ the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are established as the following:

(i) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(ii) the NCEES FE examination with a passing score as established by the NCEES;

(iii)(A) the NCEES SE examination;

(B) prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;

(C) prior to January 1, 2004, an equivalent 16-hour state written examination with a passing score; or

(D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.

(b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:

(A) no sooner than 30 days following any failure, up to three failures; and

(B) no sooner than six months following any failure thereafter.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant shall successfully complete the education requirement set forth in Subsection R156-22-302b(2) ~~[and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302e(4)].~~

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except

that the Board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 10 years preceding the date of the license application, and who was not required to pass the NCEES PE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the Board may waive either the NCEES FS examination or the NCEES PS examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FS examination or the NCEES PS examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on March 31 of each odd numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall ~~[be required to]~~ complete not fewer than ~~[24]~~30 hours of qualified professional education directly related to the ethics, business and technical content aimed at maintaining, improving, or expanding the skills and knowledge relevant to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;
 (c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of ~~[+2]~~15 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of ~~[four]~~five hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of ~~[eight]~~ten hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than ~~[four]~~five of the ~~[eight]~~ten hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the [24]30 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of ~~[+2]~~15 hours of qualified continuing professional education into the next two year period.

(7) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(8) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete [24]30 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

(9) The Division may waive continuing education in accordance with Section R156-1-308d.

R156-22-305. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the professional engineer, professional structural engineer or professional land surveyor licensee shall not engage in the profession for which the license was issued while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years of the license being reactivated, completed [24]30 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) ~~[failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Rules of Professional Conduct", as published in the NCEES Model Rules, revised August 2010, which is hereby incorporated by reference.]~~ failing, in the performance of services for clients, employers, and customers to be cognizant that the first and foremost responsibility is to the public welfare;

(5) ~~failing to hold paramount the duty to safeguard life, health, property and public welfare by approving and sealing only those design documents and surveys that conform to accepted engineering and surveying standards;~~

(6) ~~failing to notify an employer, client, or other such authority as may be appropriate when the licensee's professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered.~~

(7) ~~failing to be objective and truthful, or failing to include all relevant and pertinent information, in professional reports, statements, or testimony;~~

(8) ~~expressing a professional opinion publicly when it is not founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter;~~

(9) ~~issuing statements, criticisms, or arguments on technical matters in circumstances where such statements, arguments or criticisms, are inspired or paid for by interested parties, unless the licensee explicitly identifies the interested parties~~

on whose behalf the licensee is speaking and reveals any interest the licensee has in the matters:

(10) permitting the use of the licensee's name or the licensee's firm name by, or associating in business ventures with, any person or firm that is engaging in fraudulent or dishonest business or professional practices;

(11) having knowledge of possible violations of any of these rules of professional conduct, and failing to provide the Division with the information and assistance necessary to make a final determination of such violation;

(12) accepting and undertaking assignments when not qualified by education, experience and training, or that exceed the licensee's competency and ability in the specific technical fields of engineering or surveying involved;

(13) affixing a signature or seal to any plans or documents dealing with subject matter in which the licensee lacks competence, or to any such plan or document not prepared under the licensee's responsible charge;

(14) failing to ensure, when accepting assignments for coordination of an entire project, that each design segment is signed and sealed by the licensee responsible for preparation of that design segment;

(15) revealing facts, data or information obtained in a professional capacity without the prior consent of the client or employer, except as authorized or required by law;

(16) soliciting or accepting gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients;

(17) failing to make full prior disclosures to employers or clients of potential conflicts of interest or other circumstances that could influence or appear to influence the licensee's judgment or the quality of the licensee's service;

(18) accepting compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties;

(19) soliciting or accepting a professional contract from a government body with respect to which a principle or officer of the licensee's organization serves as a member;

(20) if serving as a member, advisor, or employee of a government body or department while also serving as the principal or employee of a private concern, participating in decisions with respect to professional services offered or provided by the private concern to the governmental body with respect to which the licensee services;

(21) falsifying or permitting representation or exaggeration of the academic or professional qualifications, the degree of responsibility in prior assignments, or the complexity of prior assignments, of the licensee or the licensee's associates;

(22) misrepresenting pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments, in presentations incident to the solicitation of employment or business;

(23) offering, giving, soliciting, or receiving, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure work, or making any political contribution with the intent to influence the award of a contract by public authority;

(24) attempting to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, or indiscriminately criticizing another licensee's work;

(25) receiving gratuities from material, product, or services suppliers for specifying or endorsing their goods or services; and

(26) failing to fully disclose and obtain consent in writing of the principal employer and all interested parties prior to accepting or engaging in supplemental professional engineering, structural engineering, or land surveying services.

R156-22-503. Administrative Penalties.

(1) In accordance with Subsection 58-22-503, the following fine schedule shall apply to citations issued to individuals licensed under Title 58, Chapters 1 and 22:

.....

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: professional land surveyors, professional engineers, professional structural engineers

Date of Enactment or Last Substantive Amendment: [January 24, 2013]2014

Notice of Continuation: June 25, 2012

Authorizing, and Implemented or Interpreted Law: 58-22-101; 58-1-106(1)(a); 58-1-202(1)(a)

Education, Administration
R277-117
Utah State Board of Education
Protected Documents

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38299

FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-117 is amended to include language protecting records under the Utah Government Records Access and Management Act (GRAMA).

SUMMARY OF THE RULE OR CHANGE: Language is added regarding protected records under GRAMA.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(c)(iii) and Subsection 53A-1-402(1)(c)(iv) and Subsection 53A-1-402(1)(e)(i) and Subsection 63G-2-305(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to this rule add language regarding Utah State Board of Education (USBE) protected records under GRAMA which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule add language regarding USBE protected records under GRAMA which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to this rule add language regarding USBE protected records under GRAMA which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule add language regarding USBE protected records under GRAMA which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule add language regarding Board protected records under GRAMA which likely will not result in any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-117. Utah State Board of Education Protected Documents.

R277-117-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Request for proposal or RFP" means an official application or offer for services provided to the Board/USOE in response to an advertised opportunity to provide goods or services.
- C. "RFP-like document" means a grant application or a proposal of any kind offered in response to a Board request for applicants to provide goods or services to public education.
- D. "USOE" means the Utah State Office of Education.

R277-117-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-402(1)(c)(iii) which requires the Board to set minimum standards for alternative and pilot programs, Section 53A-1-402(1)(c)(iv) which requires the Board to set minimum standards for curriculum and instruction requirements, Section 53A-1-402(1)(e)(i) which requires the Board to set minimum standards for school productivity and cost effectiveness measures, Section 63G-2-305(6) which allows the Board to protect records if the disclosure would impair government procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a

governmental entity consistent with other provisions of Section 63G-2-305 and Section 63G-2-309, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule:

(1) is to maintain fairness, objectivity, efficiency and timeliness, as the Board fulfills constitutional and statutory directives to and responsibilities for Utah public schools and public school programs.

(2) to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers.

R277-117-3. Board Procedures in Preparing and Releasing RFP and RFP-like Proposals or Grants.

A. The Board or USOE staff acting for the Board shall act consistent with Section 63G-6-101 et seq. in advertising and soliciting services for Utah public schools unless the Board is specifically exempt from the procurement process in which case the Board shall continue to protect the integrity of a competitive process with the provisions of this rule.

B. The Board shall develop RFPs or RFP-like requests using the plain language of state statute(s) or federal regulation(s) that directs the Board to seek competitive or non-competitive applications or proposals for services that are funded through a public education appropriation to the Board.

C. The USOE, acting for the Board, shall use legislative intent to develop RFPs or RFP-like requests only when legislative intent is specifically written in state law, is passed by the State Legislature and is specific to the RFP in development.

D. The Board may request written information from legislators or legislative staff to explain the intent of individual bill sponsors; all written information received under ~~[this section]~~R277-117-3 shall be public information.

E. Board members or USOE staff may seek at the Board's or staff's sole discretion, additional information and expertise to facilitate the development of an RFP. All information gathered under this provision shall be public information, including the source of the information, unless the records are specifically protected under Section 63G-2-305(17).

F. The Board may allow for public comment at Board meetings or Board committee meetings to discuss the legislative intent for RFPs.

R277-117-4. Confidentiality of RFP and RFP-like Proposals or Grants Prior to Release by the USOE.

A. The RFP or RFP-like proposal shall be a protected document under Section 63G-2-305(22) until the proposal is released by the USOE or a commercial distributor of an RFP specifically commissioned by the USOE.

B. USOE staff shall stamp or mark all draft RFP documents DRAFT until the final version of an RFP or RFP-like document is officially released for public review and response.

C. If an RFP process for which the Board is responsible is compromised, as determined by a vote of the Board if necessary, the proposal shall be void and the USOE shall begin a new RFP process.

D. A USOE employee who intentionally violates the provisions of this rule may be subject to employment discipline up to and including termination.

KEY: RFPs, grants, confidentiality

Date of Enactment or Last Substantive Amendment: ~~February 24, 2009~~2014

Notice of Continuation: February 13, 2014

Authorizing, and Implemented or Interpreted Law: 53A-1-402(1)(i)(c)(iii); 53A-1-402(1)(c)(iv); 53A-1-402(1)(e)(i); 53A-1-401(3)

Education, Administration
R277-400
School Emergency Response Plans

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38300
FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-400 is amended to provide language allowing access to public school buildings by specific groups, requiring, rather than permitting, local education agencies (LEAs) to alternate between required fire drills and emergency drills and giving LEAs/schools flexibility to schedule drills appropriate for the schools and their communities.

SUMMARY OF THE RULE OR CHANGE: The amendments provide language for access to buildings by specific groups, a requirement for other emergency drills, and give LEAs/schools flexibility to schedule drills appropriate for the schools and their communities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments provide language requiring local policies about access to buildings by specific groups, a requirement for other emergency drills, and give LEAs/schools flexibility to schedule drills appropriate for the schools and their communities which likely will not result in a cost or savings to state government.

◆ **LOCAL GOVERNMENTS:** The amendments provide language requiring local policies about access to buildings by specific groups, a requirement for other emergency drills, and give LEAs/schools flexibility to schedule drills appropriate for the schools and their communities which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments provide language requiring local policies about access to buildings by specific groups, a requirement for other emergency drills, and give LEAs/schools flexibility to schedule drills appropriate for the schools and their communities which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments provide language requiring local policies about access to buildings by specific groups, a requirement for other emergency drills, and give LEAs/schools flexibility to schedule drills appropriate for the schools and their communities which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide language requiring local policies about access to buildings by specific groups, a requirement for other emergency drills, and give LEAs/schools flexibility to schedule drills appropriate for the schools and their communities which likely will not result in any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-400. School Emergency Response Plans.

R277-400-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance which could reasonably endanger the safety of school children or disrupt the operation of the school.

C. "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an ~~school district~~ LEA or a school.

D. "Emergency Response Plan" means a plan developed by an ~~school district~~ LEA or school to prepare and protect students and staff in the event of school violence emergencies.

E. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-400-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X Section 3 which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and ~~school districts~~ LEAs in the event of ~~natural disasters or~~ school ~~violence~~ emergencies as defined in R277-400-1B. This rule also directs LEAs to develop prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school ~~violence~~ emergencies.

R277-400-3. Establishing ~~School District~~ LEA Emergency Preparedness and Emergency Response Plans.

A. By July 1 of each year, each LEA shall certify to the Board that the LEA emergency preparedness and emergency response plan has been practiced at the school level, presented to and reviewed by its teachers, administrators, students and their parents, local law enforcement, and public safety representatives consistent with Section 53A-3-402(18).

B. As a part of an LEA's annual application for state or federal Safe and Drug Free School funds, the LEA shall reference its Emergency Response plan.

C. The plan(s) shall be designed to meet individual school needs and features. An ~~school district~~ LEA may direct schools within the ~~school district~~ LEA to develop and implement individual plans.

D. The LEA shall appoint a committee to prepare plan(s) or modify existing plan(s) to satisfy this rule. The committee shall consist of appropriate school and community representatives which may include school and ~~school district~~ LEA administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. Governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels shall be included on the committee.

E. ~~The~~ Each LEA shall ~~appoint appropriate persons at least once every three years to~~ review the plan(s) at least once every three years.

F. The Board shall develop Emergency Response ~~p~~ plan models under Section 53A-3-402(18)(d).

R277-400-4. Notice and Preparation.

A. A copy of the plan(s) for each school within an ~~school district~~ LEA shall be filed in the LEA superintendent's or charter school director's office.

B. At the beginning of each school year, parents and staff shall receive a written notice of relevant sections of ~~[school-district]~~LEA and school plans which are applicable to that school.

C. Each school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year. Community, student, teacher awareness, or training, such as those outlined in R277-400-7 and 8, would be appropriate activities offered during the week.

R277-400-5. Plan(s) Content--Educational Services and Student Supervision and Building Access.

~~[The]~~An LEA's plan shall contain measures which assure that, during an emergency, school children receive reasonably adequate educational services and supervision during school hours.

~~[A-]~~(1) Evacuation procedures shall assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

~~[B-]~~(2) Release of a child ~~[below]~~younger than ninth grade ~~age~~ at other than regularly scheduled hours is prohibited unless the parent or another responsible person has been notified and has assumed responsibility for the child. An older child may be released without such notification if a school official determines that the child is reasonably responsible and notification is not practicable.

~~[C-]~~(3) LEAs shall, to the extent reasonably possible, provide educational services to school children whose regular school program has been disrupted by an extended emergency.

B. LEA plans, as determined by the LEA board, shall address access to public school buildings by specific groups: students, community members, lessees, invitees, and others.

(1) Access planning may include restricted access for some individuals.

(2) Plans shall address building access during identified time periods.

(3) Plans shall address possession and use of school keys by designated administrators and employees.

C. Resources and materials available for emergency training shall be identified in an LEA or school's plan.

R277-400-6. Emergency Preparedness Training.

A. The plan shall contain measures which assure that school children receive emergency preparedness training.

~~[A]~~B. School children shall ~~[be provided with]~~receive training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

~~[B]~~C. ~~[Fire]~~Emergency drills:

(1) During each school year, elementary schools shall conduct ~~[fire]~~emergency drills at least once each month during school ~~[sessions]~~time.

~~[]~~(2) A fire drill in secondary schools shall be conducted at least every two months, for a total of four fire drills during the nine month school year.

~~[]~~(3) The first fire drill shall be conducted within the first 10 days of the school year for both elementary and secondary schools.

~~[]~~(4) ~~[Required emergency evacuation drills may be substituted every other time by a security or safety drill to~~

~~include]~~LEAs shall alternate one of the following practices or drills with required fire drills:

- ~~(a) shelter in place;~~
- ~~(b) earthquake[~~-drill~~]; or~~
- ~~(c) lock down for violence[-];~~
- ~~(d) bomb threat;~~
- ~~(e) civil disturbance;~~
- ~~(f) flood;~~
- ~~(g) hazardous materials spill;~~
- ~~(h) utility failure;~~
- ~~(i) wind or other types of severe weather;~~
- ~~(j) shelter and mass care for natural and technological hazards; or~~
- ~~(k) an emergency drill appropriate for the particular school location.~~

~~[]~~(5) The routine emergency evacuation drill, for fire, shall be conducted at least every other evacuation drill.

~~[]~~D. Fire drills:

~~[]~~(6) Fire drills shall include the complete evacuation of all persons from the school building or the portion ~~[thereof]~~of the building used for educational purposes. An exception may be made for the staff member responsible for notifying the local fire ~~[department]~~emergency contact and handling emergency communications.

(1) Fire drills:

(6) Fire drills shall include the complete evacuation of all persons from the school building or the portion ~~[thereof]~~of the building used for educational purposes. An exception may be made for the staff member responsible for notifying the local fire ~~[department]~~emergency contact and handling emergency communications.

(2) All schools shall have one fire drill in the first 10 days of the regular school year.

(3) Elementary schools (grades K-6) shall have at least one fire drill every other month throughout the school year.

(4) Secondary schools (grades 7-12) shall have at least one fire drill every two months throughout the school year.

(5) Secondary schools (grades 7-12) shall have one fire drill in the first 10 days of the calendar year.

~~[]~~(7) When required by the local fire chief, the local fire department shall be notified prior to each fire drill.

~~[]~~(8) When a fire alarm system is provided, fire drills shall be initiated by activation of the fire alarm system.

~~[]~~C. Schools shall hold at least one drill for other emergencies during the school year.

~~[]~~D. Schools that include both elementary and secondary grades in the school shall comply, at a minimum, with the elementary emergency drill requirements.

~~[]~~E. Resources and materials available for training shall be identified in the plan.

R277-400-7. Emergency Response ~~[Training]~~Review and Coordination.

A. Each LEA shall provide an annual training for ~~[school-district]~~LEA and school building staff on employees' roles, responsibilities and priorities in the emergency response plan.

B. LEAs shall require schools to conduct at least one annual drill for school ~~[violence]~~ emergencies ~~[]~~in addition to drills required under R277-400-6B(4) which shall be held no later than October 1 annually.

C. LEAs shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

D. LEAs shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

E. ~~[School districts]~~LEAs and schools shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

A. LEAs shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

B. As part of the violence prevention and intervention strategies, schools may provide age-appropriate instruction on firearm safety ~~[(not use)]~~including appropriate steps to take if a student sees a firearm or facsimile in school.

C. LEAs shall also develop, to the extent resources permit, student assistance programs such as care teams, school intervention programs, and interagency case management teams.

D. In developing student assistance programs, LEAs are encouraged to coordinate with and seek support from other state agencies and the Utah State Office of Education.

R277-400-9. Cooperation With Governmental Entities.

A. As appropriate, an LEA may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. LEAs shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services. The plan(s) shall contain procedures for assessing and providing school facilities, equipment, and personnel to meet public emergency needs.

C. The plan(s) developed under R277-400-5 shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance;

(2) the local board, through its superintendent, is the chief officer for ~~[school district]~~LEA emergencies;

(3) the local charter school board through its director is the chief officer for local charter school emergencies;

(4) In the event of an emergency, school personnel shall maintain control of public school students and facilities during the regular school day or until students are released to ~~[a-]parents~~ or legal guardians.

R277-400-10. Fiscal ~~[Procedures]~~Accountability.

The plan(s) under R277-400-5 shall address procedures for recording LEA funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

KEY: emergency preparedness, disasters, safety, safety education

Date of Enactment or Last Substantive Amendment: ~~[September 21, 2012]~~2014

Notice of Continuation: February 13, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b)

Education, Administration
R277-495
Required Policies for Electronic
Devices in Public Schools

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38301

FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-495 is amended to provide updated local education agency (LEA) responsibilities, policy requirements, and terminology.

SUMMARY OF THE RULE OR CHANGE: The amended rule provides additional definitions, additional LEA policy requirements for student and employee use of LEA-owned and privately-owned electronic devices, and changes in terminology.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amended rule provides additional definitions, additional LEA policy requirements for student and employee use of LEA-owned and privately-owned electronic devices, and changes in terminology which likely will not result in a cost or savings to the state.

♦ **LOCAL GOVERNMENTS:** The amended rule provides additional definitions, additional LEA policy requirements for student and employee use of LEA-owned and privately-owned electronic devices, and changes in terminology which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amended rule provides additional definitions, additional LEA policy requirements for student and employee use of LEA-owned and privately-owned electronic devices, and changes in terminology which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amended rule provides additional definitions, additional LEA policy requirements for student and employee use of LEA-owned and privately-owned electronic devices, and changes in terminology which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amended rule provides additional definitions, additional LEA policy requirements for student and employee use of LEA-owned and privately-owned electronic devices, and changes in terminology which likely will not result in any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-495. Required Policies for Electronic Devices in Public Schools.

R277-495-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Electronic device" means a ~~[privately owned]~~ device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "LEA-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is owned, provided, issued or lent by the LEA to a student or employee.

E. "Privately-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is not owned or issued by the LEA to a student or employee.

~~[E]~~E. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.

G. "Student," for purposes of this rule, means any individual enrolled as a student at the LEA regardless of the part-time nature of the enrollment or the age of the individual.

H. "The Children's Internet Protection Act (CIPA)" means regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC. CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the

21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.

~~[D]~~L. "USOE" means the Utah State Office of Education.

J. "Utah Education Network (UEN)" is a robust network that connects most Utah LEAs, schools, and higher education institutions to quality educational resources and services consistent with Section 53B-17-102.

R277-495-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-901(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools, and 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with Internet access to certify they have Internet safety policies and technology protection measures in place in order to receive discounted internet access and services.

B. The purpose of this rule is to direct all ~~[public school districts or public schools, including charter schools]~~LEAs or public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices, both LEA-owned and privately-owned, while on public school premises and, for LEA-owned devices, wherever the devices are used.

R277-495-3. Local Board and Charter School Responsibilities.

~~[A. Local boards of education and local charter governing boards shall establish a timeline that requires all schools under their supervision have a policy governing the use of electronic devices in schools approved by local boards, effective and posted for students, employees, parents and community member access no later than April 1, 2009.~~

A. LEAs shall require all schools under their supervision to have a policy or policies for students, employees and, where appropriate, for invitees, governing the use of electronic devices on school premises and at school sponsored activities.

B. LEAs shall review and approve policies regularly.

~~[B]C. [Local boards and charter governing boards]LEAs~~ shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.

~~[C]D. [Local boards and charter governing boards]LEAs~~ shall provide copies of their policies or clear electronic links to policies at LEA offices, in schools and on the LEA website.

~~[D]E. [School districts]LEAs~~ and schools within ~~[school districts]LEAs~~ shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

F. LEAs shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised Internet safety policy. LEAs shall retain documentation of the policy review and adoption actions.

R277-495-4. Policy Requirements.

A. Local policies shall ~~include~~ address the following minimum components~~;~~:

(1) ~~[scope of coverage of the policy, including clear rules for school premises, school hours, school activities, after school activities, school sponsored activities at remote sites, vehicles transporting students to and from school activities;~~

~~_____ (2)]definitions of devices covered by policy;~~

~~[_____ (3)]prohibitions against use of electronic devices during Utah Performance Assessment System for Students (U-PASS) assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;~~

~~_____ (4)]clear information about restrictions, if any, on when or where possession of electronic devices, active or deactivated, are strictly prohibited or allowed, such as the use of an electronic calculator by a student consistent with a current and valid IEP, as determined by the school district/school;~~

~~]~~ ~~(5)]prohibitions on the use of electronic devices in [a-] ways that bull[ies]y, humiliate[s], harass[es], or intimidate[s] school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violate[s] local, state, or federal laws; and~~

~~_____ (3)]the prohibition of access by students, LEA employees and invitees to inappropriate matter on the Internet and World Wide Web while using LEA equipment, services or connectivity whether on school property or while using school-owned or issued devices;~~

~~_____ (4)]the safety and security of students when using electronic mail, chat rooms, and other forms of direct electronic communications (including instant messaging);~~

~~_____ (5)]unauthorized access, including hacking and other unlawful activities by LEA electronic device users; and~~

~~_____ (6)]procedures, if any, and due process, for the confiscation and recovery of electronic devices used in violation of local policies.]unauthorized disclosure, use and dissemination of personal student information under the Family Educational Rights and Privacy Act, 34 CFR, Part 99.~~

B. Additional requirements for student policies - In addition to the provisions of R277-495-4A, policies for student use of electronic devices shall include:

~~_____ (1)]prohibitions against use of electronic devices during standardized assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;~~

~~_____ (2)]provisions that inform students that there may be administrative and criminal penalties for misuse of electronic devices and that local law enforcement officers may be notified if school employees believe that a student has misused an electronic device in violation of the law;~~

~~_____ (3)]provisions that inform students that violation of LEA acceptable use policies may result in confiscation of LEA-owned devices which may result in missed assignments, inability to participate in required assessments and possible loss of credit or academic grade consequences;~~

~~_____ (4)]provisions that inform students that they are personally responsible for devices assigned or provided to them by the LEA, both for loss or damage of devices and use of devices consistent with LEA directives;~~

~~_____ (5)]provisions that inform students and parents that use of electronic devices in violation of LEA or teacher instructional~~

~~policies may result in the confiscation of personal devices for a designated period; and~~

~~_____ (6)]provisions that inform students that use of privately-owned electronic devices to bully or harass other students or employees and result in disruption at school or school-sponsored activities may justify administrative penalties, including expulsion from school and notification to law enforcement.~~

C. Additional requirements for employee policies - In addition to the provisions of R277-495-4A, policies for employee use of electronic devices shall include:

~~_____ (1)]notice that use of electronic devices to access inappropriate or pornographic images on school premises is illegal, may have both criminal and employment consequences, and where appropriate, shall be reported to law enforcement;~~

~~_____ (2)]notice that employees are responsible for LEA-issued devices at all times and misuse of devices may have employment consequences, regardless of the user; and~~

~~_____ (3)]notice that employees may use privately-owned electronic devices on school premises or at school sponsored activities when the employee has supervisory duties only as directed by the employing LEA; and~~

~~_____ (4)]required staff responsibilities in educating minors on appropriate online activities and in supervising such activities.~~

~~[B]D.~~ Local policies may also include the following:

~~(1)]prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;~~

~~(2)]procedures to report the misuse of electronic devices;~~

~~(3)]potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;~~

~~(4)]exceptions to the policy for special circumstances, health-related reasons and emergencies, if any; and~~

~~(5)]strategies for use of technology that enhance instruction[; and~~

~~_____ (6)]directives, protections, and requirements, if any, for school employees or invitees, or both].~~

~~[_____ C.]The USOE shall receive an annual assurance from the school district or charter school governing board as required under R277-108 that the local board has presented and implemented an electronic device policy consistent with the timelines and provisions of this rule.~~

~~_____ D.]School districts or traditional school and charter schools shall post their duly enacted electronic device policies on their district or school websites.~~

~~]~~ ~~_____ E.]An LEA shall certify annually to the USOE and as required by the FCC, that the LEA has a CIPA-compliant Internet safety policy.~~

R277-495-5. Board and USOE Responsibilities.

A. The ~~Board and~~ USOE shall provide resources, upon request, for ~~[school districts]~~LEAs and public schools as they develop and update electronic device policies, including sources for successful policies, assistance with reviewing draft policies and amendments, and information about bullying, harassing, and discrimination via electronic devices consistent with ~~[R277-609 and]R277-613.~~

B. The Board and USOE shall develop or provide a model policy or a policy framework to assist ~~[school districts and individual]~~ LEAs and public schools in developing and implementing their policies.

C. The Board and USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.

D. The Board and USOE shall ensure that parents and school employees are involved in the development and implementation of policies.

E. The Board and USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

KEY: electronic devices, policy

Date of Enactment or Last Substantive Amendment: ~~[July 11, 2011]~~ **2014**

Notice of Continuation: December 16, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-11-901(2)(c)(i)

Education, Administration

R277-526

Paraeducator to Teacher Scholarship Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38302

FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-528 is amended to provide clarification about local education agency (LEA) and Utah State Board of Education (USBE) responsibilities, and scholarship recipient eligibility.

SUMMARY OF THE RULE OR CHANGE: Definitions are added and revised, LEA and USBE responsibilities are updated, and scholarship recipient eligibility is updated and clarified.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-6-802(8)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to this rule add and update definitions, update LEA and USBE

responsibilities, and update and clarify scholarship recipient eligibility which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The amendments to this rule add and update definitions, update LEA and USBE responsibilities, and update and clarify scholarship recipient eligibility which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to this rule add and update definitions, update LEA and USBE responsibilities, and update and clarify scholarship recipient eligibility which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule add and update definitions, update LEA and USBE responsibilities, and update and clarify scholarship recipient eligibility which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule add and update definitions, update LEA and USBE responsibilities, and update and clarify scholarship recipient eligibility which likely will not result in any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-526. Paraeducator to Teacher Scholarship Program.

R277-526-1. Definitions.

A. "Board" means the Utah State Board of Education.

~~B.~~ "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~B]C.~~ "Paraeducator" for purposes of this rule means a school employee who:

(1) delivers instruction under the direct supervision of a teacher; and

(2) works in an area where there is a shortage of qualified teachers, such as special education, Title I, English as a Second Language, reading remediation, math, or science.

~~C]D.~~ "Paraeducator Scholarship Selection Committee (Committee)" means the committee established by the Board to select scholarship recipients.

~~D]E.~~ "Scholarship" for purposes of this rule means funds provided by the Board directly to a ~~paraeducator~~ Utah institution of higher education on behalf of the paraeducator to pay only for the actual and documented costs for tuition toward an associate's or a bachelor's degree program to become a licensed teacher.

~~E]E.~~ "USOE" means the Utah State Office of Education.

R277-526-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-6-802(8) which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

B. The purpose of this rule is to distribute funds to paraeducators seeking to become licensed educators and to establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-3. Scholarship Amounts and Requirements.

A. A paraeducator stipend awarded under this rule shall be used solely and completely for expenses approved by Section 53A-6-802 and this rule annually between July 1, ~~2008~~ and the following June 30, ~~2009~~.

B. A scholarship recipient shall remain continuously employed, consistent with the employment agreement and Section 53A-6-802(7).

C. A scholarship recipient shall provide documentation of progress toward graduation, as requested by the employer or the Board.

D. A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses may be responsible to reimburse the Board for the amount of scholarship funding.

E. The Committee shall determine funding for applicants from applications received from ~~school districts and charter schools~~ LEAs after considering the number of applications received and the amount of funding available.

F. The Committee may develop and consider selection criteria including:

(1) support from the recommending ~~school districts/charter schools~~ LEA; and

(2) geographical distribution of recipients.

R277-526-4. Applicant Scholarships Recipient and ~~School District/Charter School~~ LEA Responsibilities.

A. Scholarship recipients shall be employed for a minimum of 10 hours per week by a public ~~school district or charter school~~ LEA at the time of application for the Paraeducator Scholarship ~~or during the 2008-09 school year~~ and during any year in which the paraeducator receives the scholarship.

B. Scholarship applicants shall submit completed applications found on the USOE website ~~or available from the USOE in person or by mail~~ to their employers ~~no later than June 15, 2008~~.

C. Applicants shall provide university transcripts and information about tuition expenses only on the completed application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.

D. ~~School districts and charter schools~~ LEAs shall ~~rank completed applications of qualified paraeducators within the school district or charter school in priority order and~~ submit all applications to the USOE on or before ~~July 1, 2008~~ May 15 annually.

E. Scholarship recipients and ~~school districts/charter schools~~ LEAs whose employees receive funding under this program shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

A. The Board shall establish a Paraeducator Scholarship Selection Committee and working procedures for the Committee consistent with 53A-6-802(4) by May 15, 2008.

B. The Committee shall consist of:

(1) one Board member designated by the Board;

(2) one representative of the Board of Regents designated by the Board of Regents;

(3) one representative of the largest parent/teacher association in the state;

(4) no more than two additional representatives of the general public designated by the Board consistent with Section 53A-6-802(4).

C. The Committee shall receive completed ~~and ranked~~ applications from ~~school districts and charter schools~~ LEAs consistent with R277-526-4.

~~D. The Committee shall identify recipients for funding based on criteria of Section 53A-6-802(4)(d).~~

~~E]D.~~ The Committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

~~F]E.~~ The Committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients ~~school districts, and charter schools~~ and LEAs.

KEY: paraeducators, scholarships

Date of Enactment or Last Substantive Amendment: ~~August 7, 2008~~ 2014

Notice of Continuation: August 2, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-6-802(8)

Environmental Quality, Water Quality R317-2-14 Numeric Criteria

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38288

FILED: 02/11/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R317-2-7.1 allows site-specific standards when the natural or unalterable conditions prevent the attainment of the statewide standard. In this case, the statewide standard for total dissolved solids to protect the designated use Class 4 (agricultural use) waters is 1,200 mg/l. After a two year intensive study to supplement the existing historical data, a report titled Proposed Site-Specific Standard for Total Dissolved Solids, Blue Creek, Box Elder County, Utah was produced by the Utah Division of Water Quality and drafted on 09/04/2013. This amendment is a site-specific standard based on natural conditions proposed for Blue Creek reservoir and Blue Creek, Box Elder County, Utah.

SUMMARY OF THE RULE OR CHANGE: The site-specific total dissolved solids standards would be added as a footnote to Table 2.14.1 in Section R317-2-14. For Blue Creek reservoir, a site-specific total dissolved solids standard of 2,200 mg/l as a one-hour maximum is proposed. For Blue Creek from Great Salt Lake to Blue Creek reservoir, a site-specific total dissolved solids standard of 6,300 mg/l as a one-hour maximum and 3,900 mg/l as a 30-day average is proposed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 33 U.S.C. 1251 and 33 U.S.C. 1311-1317 and 33 U.S.C. 1329 and Section 19-5-105 and Section 19-5-110

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This change is anticipated to have no impacts on the state budget. The costs for supporting the proposed total dissolved solids standard are the same as the costs for the existing total dissolved solids standard.
- ◆ **LOCAL GOVERNMENTS:** This change is anticipated to have no impacts on the local governments. The proposed site-specific standard impacts Utah entities required to have discharge permits and local governments do not discharge to the affected waters.
- ◆ **SMALL BUSINESSES:** This change is anticipated to have no impacts on small businesses. The proposed site-specific standard impacts Utah entities required to have discharge permits and small businesses do not discharge to the affected waters.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This change is anticipated to result in significant cost avoidance for the existing permitted discharge to Blue Creek. To comply with the existing 1,200 mg/l by treating their effluent would require the expenditure of significant resources. Potential future businesses that locate in the Blue Creek watershed and have a permitted discharge would also benefit from reduced costs for treatment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change is anticipated to be neutral or reduce costs for affected entities. The proposed site-specific standard impacts Utah entities required to have discharge permits. The proposed change will increase the concentration of total dissolved solids in permitted discharges. If an entity's discharge exceeds 1,200 mg/l (current standard), the proposed change will reduce the need for treatment and associated costs. If an entity's discharge is less than 1,200 mg/l, the change will have no effect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes will appropriately decrease costs on affected businesses. Under the existing rule, affected businesses are required to remove total dissolved solids from their effluent to concentrations that are lower than naturally occur in the creek.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/04/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 03/05/2014 06:00 PM, Brigham City Library, 26 E Forest St, Conference Room, Brigham City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/30/2014

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-14. Numeric Criteria.

TABLE 2.14.1
 NUMERIC CRITERIA FOR DOMESTIC,
 RECREATION, AND AGRICULTURAL USES

Parameter	Domestic	Recreation and		Agri-
	Source	Aesthetics	2B	culture
	1C	2A	2B	4
BACTERIOLOGICAL				
(30-DAY GEOMETRIC MEAN) (NO.)/100 ML (7)				
E. coli	206	126	206	
MAXIMUM				
(NO.)/100 ML (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha	15			15
Gross Beta (Combined)	4 mrem/yr			Radium 226, 228
Strontium 90	5			
Tritium	8			
Uranium	20000			
	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L) (6)		0.05	0.05	

FOOTNOTES:

- (1) Reserved
- (2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.
- (3) Maximum concentration varies according to the daily maximum mean air temperature.

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from Gunnison Bay to Blue Creek Reservoir: one-hour maximum 6,300 mg/l, 30-day average 3,900 mg/l

Blue Creek Reservoir and tributaries, Box Elder County, one-hour maximum 2,200 mg/l

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89
 1,450 mg/l (Apr.-Sept.)
 1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

- (5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.
 - (6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.
 - (7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria *E. coli* are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of *E. coli* from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.
- Measurement of *E. coli* using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.
- For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

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KEY: water pollution, water quality standards
Date of Enactment or Last Substantive Amendment: [~~August 19, 2013~~]**2014**
Notice of Continuation: October 2, 2012
Authorizing, and Implemented or Interpreted Law: 19-5

**Human Services, Substance Abuse
 and Mental Health
 R523-1
 Procedures**

**NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 38297
 FILED: 02/13/2014**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The repeal of this rule is due to the extensive revisions necessary. It will be replaced by three new rules, R523-4, R523-5, and R523-6. (DAR NOTE: The proposed new Rule R523-4 is under DAR No. 38292, the proposed new Rule R523-5 is under DAR No. 38293, and the proposed new Rule R523-6 is under DAR No. 38298 in this issue, March 1, 2014, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provided guidance to the local authorities, guidance for treatment at the state hospital, due process and certification of case managers and designated examiners. The rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-105(5)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--This rule will be replaced by three new rules, R523-4, R523-5, and R523-6.
- ◆ **LOCAL GOVERNMENTS:** None--This rule will be replaced by three new rules, R523-4, R523-5, and R523-6.
- ◆ **SMALL BUSINESSES:** None--This rule will be replaced by three new rules, R523-4, R523-5, and R523-6.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule will be replaced by three new rules, R523-4, R523-5, and R523-6.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by three new rules, R523-4, R523-5, and R523-6.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since this rule will be replaced by three new rules, R523-4, R523-5, and R523-6, there is no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 SUBSTANCE ABUSE AND MENTAL HEALTH
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov
- ◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

[R523-1. Procedures.

R523-1-1. Authority.

(1) This rule establishes procedures and standards for administration of substance abuse and mental health services as granted by Subsection 62A-15-105(5).

R523-1-2. Purpose.

(1) The purpose of this rule is to provide:

- (a) procedures for rulemaking by the division;
- (b) clarification of the relationship between the division and the local authorities;
- (c) program standards for community mental health programs;
- (d) a process for local authorities to set fees for service;
- (e) a priority for treatment in community mental health centers;
- (f) guidance on carryover from funds generated through collections by community mental health centers;
- (g) a list of consumer rights;
- (h) guidance in the use of division local authority data for evaluations, research and statistical analysis;
- (i) allocation of Utah State Hospital adult beds to local mental health authorities;
- (j) standards for designated examiner certifications;
- (k) distribution formulas for the appropriation of funds to the local substance abuse and mental health authorities;
- (l) allocation of Utah State Hospital child and youth beds to local mental health authorities;
- (m) procedures for administering antipsychotic medications to children;
- (n) procedures for administering electroshock therapy to children;
- (o) clarification of items prohibited from public mental health facilities;
- (p) guidance on the use of family involvement in therapeutic settings;
- (q) guidance for the use of a declaration of mental health treatment;
- (r) standards for case manager certification;
- (s) set a competitive bid process for contract and subcontracts;
- (t) set maintenance of effort standards for local substance abuse authorities;
- (u) set the distribution of Fee-On-Fine (DUI) funds; and
- (v) clarify the 20% match required by the counties on general funds passed through to the local authorities.

R523-1-3. State and Local Relationships.

(1) Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Substance Abuse and Mental Health (Division) to provide comprehensive mental health services as defined by state law pursuant to Section 17-43-302.

(2) When the Division requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA

rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA.

(3) The Division has the responsibility and authority to monitor LMHA contracts. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

(4) The Division shall oversee the continuity of care for services provided to consumers and resolve conflicts between the Utah State Hospital (USH) and LMHA, and also those between LMHA's:

(a) if negotiations between LMHA's and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the local mental health center and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the community mental health center director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHA's regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-1-5. Fee for Service.

(1) Each local authority:

(a) Shall require all programs that receive federal and state funds from the Division of Substance Abuse and Mental Health (Division) and provide services to clients to establish a policy to set and collect fees.

(i) Each fee policy shall include:

(A) a fee reduction plan based on the client's ability to pay for services; and

(B) a provision that clients who have received an assessment and require mental health treatment or substance abuse services will not be denied services based on the lack of ability to pay.

(ii) Any adjustments to the assessed fee shall follow the procedures approved by the local authority.

(b) Shall approve the fee policy; and

(c) Shall set a usual and customary rate for services rendered.

(2) All programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(3) All clients shall be assessed fees based on:

(a) the usual and customary rate established by the local authorities, or

~~_____ (b) a negotiated contracted cost of services rendered to clients.~~

~~_____ (4) Fees assessed to clients shall not exceed the average cost of delivering the service.~~

~~_____ (5) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the local authority.~~

~~_____ (6) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.~~

~~_____ (7) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.~~

~~_____ (8) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.~~

R523-1-6. Priorities for Treatment.

~~_____ (1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Substance Abuse and Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.~~

~~_____ (2) Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.~~

~~_____ (a) Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.~~

~~_____ (b) Provision of the least restrictive and most appropriate treatment and settings for:~~

~~_____ a. severely mentally ill children, youth, and adults;~~

~~_____ b. acutely mentally ill children, youth, and adults.~~

~~_____ (c) Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.~~

~~_____ (d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.~~

~~_____ (e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.~~

R523-1-7. Collections Carryover.

~~_____ (1) Local center programs may carry collections forward from one fiscal year to another.~~

~~_____ (2) Centers receive two general types of revenues -- appropriations and collections. These terms are defined as follows:~~

~~_____ (a) Appropriations:~~

~~_____ (i) State appropriated monies~~

~~_____ (ii) Federal Block Grant dollars~~

~~_____ (iii) County Match of at least 20%~~

~~_____ (b) Collections:~~

~~_____ (i) First and third party reimbursements~~

~~_____ (ii) Any other source of income generated by the center.~~

R523-1-8. Consumers Rights.

~~_____ (1) Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:~~

~~_____ (a) consumer involvement in treatment planning.~~

~~_____ (b) consumer involvement in selection of their primary therapist.~~

~~_____ (c) consumer access to their individual treatment records.~~

~~_____ (d) informed consent regarding medication~~

~~_____ (e) grievance procedures~~

~~_____ (2) This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Substance Abuse and Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.~~

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

~~_____ (1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Substance Abuse and Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.~~

~~_____ (2) The Division of Substance Abuse and Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.~~

~~_____ (3) The Division of Substance Abuse and Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year.~~

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

~~_____ 1. Pursuant to UCA 62A-15-611(2)(a), the Division of Substance Abuse and Mental Health herein establishes, by rule, a formula to allocate to local mental health authorities adult beds for persons who meet the requirements of UCA 62A-15-610(2)(a).~~

~~_____ 2. The formula established provides for allocation based on (1) the percentage of the state's adult population located within a mental health catchment area; and (2) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located within urban areas.~~

~~_____ 3. The Division hereby establishes a formula to determine adult bed allocation:~~

~~a. The most recent available population estimates are obtained from the Utah Population Estimates Committee.~~

~~b. The total adult population figures for the State are identified which includes general adults and geriatric populations. Adult means age 18 through age 64. Geriatric means age 65 and older.~~

~~c. Adult and Geriatric population numbers are identified for each county.~~

~~d. The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to UCA 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:~~

~~i. The total number of adult beds available at the Utah State Hospital are determined, from which the total number of geriatric beds and adult beds are identified.~~

~~ii. 4.8% is subtracted from the total number of beds available for adults to be allocated as a differential.~~

~~iii. 4.8% is subtracted from the total number of beds available for geriatrics to be allocated as a differential.~~

~~e. The total number of available adult beds minus the differential is multiplied by the county's percentage of the state's total adult and geriatric populations to determine the number of allocated beds for each county.~~

~~f. Each catchments area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.~~

~~g. The differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.~~

~~h. At least one adult (18 – 64) bed is allocated to each community mental health center.~~

~~4. In accordance with UCA 62A-15-611(6), the Division shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.~~

~~5. Applying the formula:~~

~~a. Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.~~

~~b. The Division of Substance Abuse and Mental Health, is responsible to calculate adult bed allocation.~~

~~c. Each local mental health authority will be notified of changes in adult bed allocation.~~

~~6. The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.~~

~~7. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.~~

R523-1-12. Program Standards.

~~(1) The Division of Substance Abuse and Mental Health establishes by rule, minimum standards for community mental health programs:~~

~~(a) Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.~~

~~(b) Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:~~

~~(i) Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill";~~

~~(ii) Designate the projected use of state and federal contracted dollars;~~

~~(iii) Define the Center's priorities for service and the population to be served.~~

~~(e) Each Center shall provide or arrange for the provision of services within the following continuum of care:~~

~~(i) Inpatient care and services (hospitalization);~~

~~(ii) Residential care and services;~~

~~(iii) Day treatment and Psycho-social rehabilitation;~~

~~(iv) Outpatient care and services;~~

~~(v) Twenty-four hour crisis care and services;~~

~~(vi) Psychotropic medication management;~~

~~(vii) Case management services;~~

~~(viii) Community supports including in-home services, housing, family support services and respite services;~~

~~(ix) Consultation, education and preventive services, including case consultation, collaboration with other county service agencies, public education and public information;~~

~~(x) Services to persons incarcerated in a county jail or other county correctional facility.~~

~~(d) Each Center shall participate in a yearly on-site evaluation conducted by the Division.~~

~~(e) The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:~~

~~(i) Services delivered to consumers commensurate with funds provided;~~

~~(ii) Progress is made toward accomplishing contract goals and objectives.~~

~~(f) The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.~~

R523-1-14. Designated Examiners Certification.

~~(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-15-602(3) and 62A-15-606).~~

~~(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.~~

~~(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.~~

~~(c) The applicant must meet the following minimum standards in order to be certified:~~

~~(i) The applicant must be a licensed mental health professional.~~

~~(ii) The applicant must be a resident of the State of Utah.~~

~~(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.~~

~~(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the~~

applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training, the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

(1) The Division establishes by rule a formula for the annual allocation of funds to local substance abuse and mental health authorities through contracts.

(2) The funding formula for mental health services shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

(a) Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

(b) The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

(c) The funding formula may utilize a determination of need other than population if the Division establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(d) Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan.

(e) The formula does not apply to:

(i) Funds that local mental health authorities receive from sources other than the Division.

(ii) Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

(iii) Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

(iv) Funds that local mental health authorities receive from the Division for research projects.

(3) The funding formula for substance abuse services shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local substance abuse authorities.

(a) Up to 15% of the purchase of service funds may be allocated by the State Division of Substance Abuse and Mental Health for statewide services; the remaining 85% of these funds will be allocated to the Local Substance Abuse Authorities as follows:

(i) Rural counties (all counties in the state except Utah, Salt Lake, Davis, and Weber) shall be allocated a rural differential of \$11,600;

(ii) Sixty percent of the remaining funds will be allocated to each county based on the need factor derived from the Incidence and Prevalence Studies;

(iii) The remaining forty percent of the funds will be allocated to each county based on the county's percent of the General Population as estimated by the Utah Office of Planning and Budget;

(b) Cost of Living Adjustments shall be determined by the State Division of Substance Abuse and Mental Health in accordance with legislative appropriations.

(c) Funds approved for a local authority, based on the funding formula, belong to that authority. In the event that there is an unexpended amount at the end of the year, the local authority will be allowed to carry these unexpended funds over into the next contract period, provided that the Division can carry the funds over. The only exception to this carryover authority will be that if the unexpended funds cause the state to not meet the statewide set-aside requirements. The division will contract these unexpended funds to other local authorities who can provide the services to fulfill the set-aside requirements. The division shall monitor the fund balances and the set-aside spending throughout the year. The decision to transfer funds will be negotiated in March of each year with any local authority that will not expend all of their funds.

R523-1-16. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

(1) The Division establishes, by rule, a formula to allocate to local mental health authorities pediatric beds.

(2) The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area.

(3) Each community mental health center shall be allocated at least one pediatric bed.

(4) The formula to determined pediatric bed allocation:

(a) The most recent available population estimates are obtained from the Governor's Office of Planning and Budget.

(b) The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

(c) Pediatric population figures are identified for each county.

~~(d) The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.~~

~~(e) Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.~~

~~(5) The Division shall periodically review and make changes in the formula as necessary.~~

~~(6) Applying the formula:~~

~~(a) Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.~~

~~(b) Each local mental health authority shall be notified of changes in pediatric bed allocation.~~

~~(7) The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.~~

~~(8) A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.~~

R523-1-17. Medication Procedures for Children, Legal Authority.

~~(1) The Division of Substance Abuse and Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication.~~

~~(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health.~~

~~(b) Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.~~

~~(c) A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.~~

~~(d) A legal guardian is one who is appointed by a testamentary appointment or by a court of law.~~

~~(e) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:~~

~~(i) The child and parent/legal guardian/legal custodian give consent.~~

~~(ii) The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.~~

~~(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.~~

~~(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:~~

~~(i) The nature of the child's mental illness.~~

~~(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.~~

~~(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.~~

~~(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.~~

~~(v) The possible side effects, if any of the recommended treatment.~~

~~(vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.~~

~~(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.~~

~~(viii) The right to give or withhold consent for the proposed medication treatment.~~

~~(ix) When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.~~

~~(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.~~

~~(h) If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.~~

~~(i) Antipsychotic medication may be administered under the following exigent circumstances:~~

~~(i) A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:~~

~~(A) A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.~~

~~(B) The basis for that belief (including a statement of the child's behaviors).~~

~~(C) The medication administered.~~

~~(D) The date and time the medication was begun.~~

~~(j) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.~~

~~(k) If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.~~

~~(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.~~

~~(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of~~

notification being provided to the child and parent/legal guardian/legal custodian:

_____ (iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information:

_____ (l) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child:

_____ (i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate:

_____ (ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present:

_____ (iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment:

_____ (iv) The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment:

_____ (v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision:

_____ (vi) If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate:

_____ (m) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

_____ (i) The child has a mental illness; and

_____ (ii) The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

_____ (iii) Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

_____ (iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

_____ (v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

_____ (n) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian:

_____ (o) A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing:

_____ (i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal:

_____ (ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal:

_____ (iii) A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party:

_____ (p) In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in accordance with subsection K of this section:

_____ (q) Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

_____ (i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing:

_____ (ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment:

_____ (iii) The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

_____ (A) The child is still mentally ill; and

_____ (B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

_____ (C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

_____ (D) The medication treatment is in accordance with prevailing standards of accepted medical practice:

_____ (iv) If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian:

_____ (v) At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

~~R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.~~

~~(1) By this rule, the Division of Substance Abuse and Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy.~~

~~(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health. The following terms are herein defined:~~

~~(b) ECT means electroconvulsive therapy.~~

~~(c) A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health.~~

~~(d) A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.~~

~~(e) Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.~~

~~(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:~~

~~(i) The nature of the child's mental illness;~~

~~(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;~~

~~(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment~~

~~(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered~~

~~(v) The possible side effects, if any, of the recommended treatment~~

~~(vi) The ability of the staff to recognize any side effects; should any actually occur, and the possibility of ameliorating or abating those side effects~~

~~(vii) The possible, if any, alternative treatments available and whether those treatments are advisable~~

~~(viii) The right to give or withhold consent for the proposed ECT/psychosurgery.~~

~~(ix) When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.~~

~~(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.~~

~~(h) If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.~~

~~(i) Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed~~

~~ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.~~

~~(j) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.~~

~~(k) Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician; and set a date and time for an ECT/Psychosurgery Hearing.~~

~~(l) The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.~~

~~(m) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.~~

~~(n) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician. Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.~~

~~(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.~~

~~(ii) If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's absence.~~

~~(iii) The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.~~

~~(iv) The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.~~

~~(v) The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.~~

~~(vi) Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision~~

~~(vii) If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.~~

~~(o) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:~~

~~(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and~~

~~(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or~~

~~(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either~~

_____ (A) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

_____ (B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

_____ (C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

_____ (iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

_____ (v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

_____ (p) The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

_____ (q) The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Substance Abuse and Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

_____ (r) ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

_____ (s) Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

_____ (t) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

_____ (1) Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to

carry firearms while completing official duties on the grounds of those facilities.

R523-1-20. Family Involvement.

_____ (1) Each mental health authority shall annually prepare and submit to the Division of Substance Abuse and Mental Health a plan for mental health funding and service delivery. Included in the plan shall be a method to educate families concerning mental illness and to promote family involvement when appropriate, and with patient consent, in the treatment program of a family member.

_____ (2) The State Division of Substance Abuse and Mental Health will monitor for compliance as part of the annual quality of care site visits.

R523-1-21. Declaration for Mental Health Treatment.

_____ (1) The State Division of Substance Abuse and Mental Health will make available information concerning the declaration for mental health treatment. Included will be information concerning available assistance in completing the document.

_____ (2) Each local mental health center shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake.

_____ (3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

_____ (4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

R523-1-23. Case Manager Certification.

_____ (1) Definitions:

_____ (a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed by the local mental health authority or contracted by a local substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.

_____ (b) "Qualified providers" include any individual who is a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed professional counselor, licensed marriage and family counselor, or a licensed substance abuse counselor, and employed by a local mental health authority or contracted by a local mental health authority.

_____ (2) A certified case manager must meet the following minimum standards:

_____ (a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-1-23(1)(b);

_____ (b) be at least 18 years of age;

_____ (c) have at least a high school degree or a GED;

_____ (d) have at least two years experience in the support of individuals with mental illness or substance abuse;

~~_____ (e) be employed by the local mental health authority or contracted by a local substance abuse authority;~~

~~_____ (f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and~~

~~_____ (g) completes an approved case management practicum.~~

~~_____ (3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-1-23(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issues a written decision regarding the request for waiver.~~

~~_____ (4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.~~

~~_____ (a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 60 days of completion of case management requirements. The Division shall issue a certificate for three years.~~

~~_____ (b) If the application is denied the individual may file a written appeal within 30 days to the Division Director.~~

~~_____ (5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health or substance abuse topics.~~

~~_____ (a) A certified case manager shall submit CEU documentation to the Division when they apply for recertification.~~

~~_____ (b) Documents to verify CEU credits include:~~

~~_____ (i) a certificate of completion documenting continuing education validation furnished by the presenter;~~

~~_____ (ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or~~

~~_____ (iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.~~

~~_____ (6) Certified case managers shall submit the Request for Recertification and documentation of 24 hours of CEU's 30 days prior to the date of expiration on the initial certificate or re-certification. Failure to submit the Request for Re-certification will result in automatic revocation of the certificate.~~

~~_____ (7) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Subsection R495-876(a), the Department of Human Services Provider Code of Conduct Policy.~~

~~_____ (a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.~~

~~_____ (b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.~~

~~_____ (c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.~~

~~_____ (d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.~~

~~_____ (8) If a certified case manager fails to complete the requirements for CEU's, their certificate will be revoked or allowed to expire and will not be renewed.~~

~~_____ (9) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times with a twelve-month period.~~

~~_____ (10) The case managers certification must be posted and available upon request.~~

R523-1-24. Distribution of Fee-On-Fine (DUI) Funds.

~~_____ (1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in R523-1-15. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the local authority's governing board to send the funds to the local service provider.~~

R523-1-25. 20% Match Required to Be County Tax Revenue.

~~_____ (1) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.~~

~~_____ (2) Failure by any county to meet its obligations under this requirement shall result in the amount of State General Funds allocated to that county by formula as described in R523-1-15 being lowered by the percent by which the county under-matches these funds.~~

~~**KEY:** bed allocations, due process, prohibited items and devices, fees~~

~~**Date of Enactment or Last Substantive Amendment:** December 29, 2009~~

~~**Notice of Continuation:** November 1, 2012~~

~~**Authorizing, and Implemented or Interpreted Law:** 17-43-302; 62A-15-103; 62A-15-105(5); 62A-15-603; 62A-15-612; 62A-15-108; 62A-15-704(3)(a)(i); 62A-15-704(3)(a)(ii); 62A-15-713(7); 62A-15-1003; 17-43-204; 17-43-301(4)(a)(x); 17-43-306]~~

Human Services, Substance Abuse and Mental Health

R523-4

Local Mental Health Authorities and Local Substance Abuse Authorities

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38292

FILED: 02/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide guidance to the Local Mental Health Authorities (LMHAs) and the Local Substance Abuse Authorities (LSAAs).

SUMMARY OF THE RULE OR CHANGE: DHS/DSAMH found it necessary to update the formula for allocation of funding to the local authorities and to make the division's rules more concise. Rule R523-1 is being repealed and will be replaced by three rules so that specific topics are within separate rules. The purpose of this rule is to provide: 1) clarification of the relationship between the Division, the Local Mental Health Authorities (LMHAs) and the Local Substance Abuse Authorities (LSAAs); 2) guidance on the formula for allocation of funding to the LMHAs and LSAAs; 3) a process for LMHAs and LSAAs to set policies on fees for service; 4) guidance on carryover from funds generated through collections; 5) guidance on priorities for treatment; 6) guidance on LMHA/LSAA written statements on consumer rights; 7) guidance in the use of data for evaluations, research and statistical analysis; 8) guidance on allocation of Utah State Hospital bed days to LMHAs; 9) guidance on LMHA/LSAA program standards; and 10) set maintenance of effort standards for local substance abuse authorities. (DAR NOTE: The proposed repeal of Rule R523-1 is under DAR No. 38297, the proposed new Rule R523-5 is under DAR No. 38293, and the proposed new Rule R523-6 is under DAR No. 38298 in this issue, March 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Subsection 62A-15-108(1) and Subsection 62A-15-611(2)(a) and Subsection 62A-15-612(2) and Subsection 62A-15-902(2)(c)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will not be any impact to the state budget. The changes in this rule are from Rule R523-1, which is being repealed, only impact the local authorities.
- ◆ **LOCAL GOVERNMENTS:** LMHAs and LSAAs will be affected by changes to the formula for allocation of funding. The formula changes will mean that the allocations will be based on more current data than in the past. The changes are being phased in over five years to minimize impact. The LMHAs and the LSAAs have participated in the process. For these reasons, the impact to the local authorities will be minimal.
- ◆ **SMALL BUSINESSES:** There will not be any impact to small businesses. The changes in this rule are from Rule R523-1, which is being repealed, only impact the local authorities.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will not be any impact to persons other than small businesses, businesses, or local government entities. The changes in this rule are from Rule R523-1, which is being repealed, only impact the local authorities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only foreseeable compliance cost to the local authorities would be that there may be some change to the matching fund requirements. However, the Division believes that this will be minimal since the change is being phased in over a five-year period, in order to minimize the impact to the local authorities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will not be any fiscal impact on businesses, only the LMHAs and LSAAs as described under "local government" above.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov
- ◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Doug Thomas, Director

523. Human Services, Substance Abuse and Mental Health.

R523-4. Local Mental Health Authorities and Local Substance Abuse Authorities.

R523-4-1. Authority.

This rule is promulgated under authority granted to the Division of Substance Abuse and Mental Health (Division) by Subsections 62A-15-105, 62A-15-108(1), 62A-15-611(2)(a), 62A-15-612(2) and 62A-15-902(2)(c).

R523-4-2. Purpose.

- (1) The purpose of this rule is to provide:
 - (a) Clarification of the relationship between the Division, the Local Mental Health Authorities (LMHAs) and the Local Substance Abuse Authorities (LSAAs).
 - (b) Guidance on the formula for allocation of funding to the LMHAs and LSAAs.
 - (c) A process for LMHAs and LSAAs to set policies on fees for service.
 - (d) Guidance on carryover from funds generated through collections.
 - (e) Guidance on priorities for treatment.
 - (f) Guidance on LMHA/LSAA written statements on consumer rights.
 - (g) Guidance in the use of data for evaluations, research and statistical analysis.
 - (h) Guidance on allocation of Utah State Hospital bed days to LMHAs.
 - (i) Guidance on LMHA/LSAA program standards.
 - (j) Set maintenance of effort standards for local substance abuse authorities.

R523-4-3. Relationship Between the Division, Local Mental Health Authorities and Local Substance Abuse Authorities.

(1) LMHAs and LSAAAs are the "service designees" of the Division to provide comprehensive mental health services and substance abuse services as defined by state law pursuant to Sections 17-43-301 and 17-43-302 and any other applicable state law.

(2) When the Division requires other services outside the comprehensive range specified by law, it may provide LMHAs/LSAAAs the first opportunity to accept or reject the service contract. If the LMHA/LSAA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA/LSAA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA/LSAA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA/LSAA.

(3) The Division has the responsibility and authority to monitor LMHA/LSAA contracts. Each mental health/substance abuse catchment area shall be visited at least once annually to monitor compliance. The LMHA/LSAA will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA/LSAA describing the findings from the site visit.

R523-4-4. Admission to the Hospital and Coordination of Care

(1) The Division has oversight of the Utah State Hospital as per Subsection 62A-15-103(2)(b)(ii) and shall oversee the Continuity of Care Committees for adult and children/youth patients (when the patient is a child or youth, then patient also refers to the parent and/or legal guardian), as it pertains to Admissions, Coordination of Care, Discharges and Transfers between LMHAs of patients to and from the Utah State Hospital (Hospital). The Division shall conduct monthly Continuity of Care Committee meetings, unless the time for the meetings is postponed or canceled for good cause.

(2) Each LMHA shall assign a liaison to the Hospital as the identified representative of the LMHA.

(a) The Liaison will coordinate patient needs for admission to the Hospital and shall complete the Hospital Pre-admission packet, which includes identifying community discharge and treatment options prior to admission. Any individual or family member independently requesting voluntary Hospital admission shall be referred to the appropriate LMHA geographical area in which the individual currently resides.

(b) LMHA liaisons are responsible to participate in the coordination of care at the Hospital. This includes participation in clinical staffing, at least monthly. The liaisons and Hospital staff are required to participate in order to coordinate patient treatment, discuss the progress of assigned patients and meet with patients and Hospital staff jointly to formulate patient care.

(c) Patients admitted to the Forensic units are under the jurisdiction of the criminal court system; if the need arises the LMHA liaison will participate in community discharge placements, and follow up care.

(d) Hospital staff and liaison will coordinate discharge plans. As there are multiple factors inherent in determining "readiness for discharge," this decision will be made on an individual basis, with input from the patient, the Hospital, the LMHA and the Division as necessary. Outplacement funds shall be used to resolve financial

barriers that delay or complicate patients discharge. Patient's preferences and feedback regarding discharge placements shall be considered. For adult patients the LMHA liaison is required to arrange discharge placement and follow up care once the patient is ready for discharge as indicated by the Division's REDI program (Readiness, Evaluation and Discharge Implementation). The Hospital and LMHAs are required to use the REDI program. REDI information will be distributed monthly to the Hospital, and the LMHAs to track progress toward discharge. The philosophy of the Hospital is to provide short-term inpatient care for the purpose of stabilization with the goal of transition to a less restrictive level of care as soon as possible. If the Hospital and/or the LMHA determine that the patient is ready for discharge and the coordination of the placement is not occurring the Hospital and/or liaison is required to notify the Division within five business days.

(e) The Liaison shall follow the Hospital's policies on admission, treatment, discharge, and transfers of all Hospital patients.

R523-4-5. Determining the Proper LMHA Under Special Situations.

(1) In the following special situations, the proper LMHA will be determined as follows:

(a) Homeless: Individuals who are homeless and in need of Hospital admission shall be the responsibility of the LMHA in which the individual came to the attention of local emergency services. If from out of state, the individual shall be referred to the LMHA where the individual was identified as mentally ill and in need of services.

(b) Children and Adolescent Patients: Children and Adolescents in state custody will be referred to the LMHA in which they resided prior to their custody being changed to the Division of Child and Family Services or the Division of Juvenile Justice Services

(c) Forensic Patients: When a forensic patient, placed at the Hospital pursuant to criminal adjudication as set forth in Utah Code, Section 62A-15-902, and is determined to meet criteria for civil commitment the patient shall be committed to LMHA where the patient resided prior to his/her arrest.

(d) Prison Transfers: Utah State Prison inmates who are transferred to the Hospital Forensic Unit and subsequently civilly committed become the responsibility of the LMHA where the person resided prior to incarceration.

(e) Developmental Center Transfers: Individuals placed at the Utah State Developmental Center (USDC), who are transferred to the Hospital for treatment of a mental illness are the responsibility of the LMHA of their last community residence (excluding foster and group home placements less than one year in duration). If the individual was admitted to the USDC as a child, the residence of the custodial parent(s) at the time of admission to USDC will be used to determine the responsible LMHA. The LMHA is responsible for treatment and discharge planning during the course of the individual's Hospital stay.

R523-4-6. Transfer Planning Between LMHAs From Hospital

(1) When a Hospital patient or the patient's legal guardian desires to relocate to a new geographical area, the patient's LMHA liaison (the liaison responsible for the civil bed in which the patient currently resides), will notify the receiving LMHA regarding the desire of the patient. It is the referring liaison's responsibility to discuss the matter with the patient and with the receiving LMHA and work toward discharge.

(2) The referring and receiving LMHA liaison will discuss the transfer and will provide information as needed.

(3) Once the receiving LMHA accepts the referral, the receiving LMHA will proceed with Hospital patient discharge planning. During the time period between the referral to the receiving LMHA and Hospital discharge, the Hospital patient will continue to be assessed against the bed allocation of the referring LMHA. The receiving LMHA is expected to work toward discharge.

(4) The LMHAs may negotiate an agreement (Local Authority to Local Authority) agreement if the patient returns to the Hospital, the patient returns to the referring LMHA bed. The agreement is not to exceed one year, whereby the referring LMHA agrees the patient's bed will be assessed against the bed allocation of the referring LMHA. The agreement specifies the role of each LMHA and who is responsible for providing needed services and payment for those services. Any such agreement shall be made in writing. If a Local Authority to Local Authority agreement cannot be reached, then the conflict resolution process as outlined in Section R523-4-7 below shall be followed.

(5) At the conclusion of the negotiated period, the receiving LMHA will assume all responsibility for the full continuum of mental health services, including Hospital care.

R523-4-7. Conflict Resolution.

(1) The Division will work to resolve conflicts between the Hospital and a LMHA, as well as conflicts between LMHAs.

(a) if negotiations between LMHAs and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the LMHA and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the LMHA director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHAs regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-4-8. Formula for Allocation of Funding.

(1) The Division establishes by rule, a formula for the annual allocation of funds to local substance abuse authorities and a formula for the annual allocation of funds to the local mental health authorities.

(a) The formulas do not apply to funds used by the Division for administration, statewide services consistent with the requirements of Section 62A-15-201 et seq. for discretionary grants awarded to the Division, or funds appropriated for drug courts and the Drug Offender Reform Act.

(b) Funds used by the Division for administration shall not exceed 5% of the total annual legislative appropriation to the Division excluding the appropriation for the Utah State Hospital.

(c) The funding formulas shall be applied annually to state and federal funds appropriated by the legislature to the Division and are intended for the annual equitable distribution of these funds to the state's local mental health and substance abuse authorities.

(d) Excluding discretionary grants, DORA, Drug Court, and other programs for which Utah Code establishes the funding process, funds used by the Division for statewide substance abuse services consistent with requirements of Section 62A-15-201 et seq. shall not exceed 15% of the total annual substance abuse legislative appropriation to the Division.

(e) Population data used in the formulas shall be updated annually using the most current data available from the United States Census Bureau.

(f) New funding and/or decreases in funding shall be processed and distributed through the funding formulas.

(g) Each Local mental health authority and substance abuse authority shall provide funding equal to at least 20% of the state general fund appropriation that it receives to fund services described in that local authority's annual plan.

(i) If a local authority is unable to provide the required matching funds, the county shall be allocated the amount the county can match.

(ii) Excess funds may be allocated on a one-time basis to local authorities with the ability to provide matching funds.

(iii) If no county can provide the required match, the Division may use the funds to purchase statewide services.

(h) Changes in funding related to the adoption of new formulas in 2014 shall be phased in over a five year period beginning in State Fiscal year 2015.

(2) Funding for mental health shall be allocated as follows:

(a) The Division shall allocate 5% of mental health funds to the 24 smallest counties ranked by population as a rural differential. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(b) The Division shall allocate all remaining mental health funds to the local authorities on a per capita basis, according to the most current population data available from the United States Census Bureau.

(c) The funding formula may utilize a determination of need other than population if the Division establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(3) The funding formula for substance abuse services shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local substance abuse authorities.

(a) The Division shall allocate a total of \$2,390,643 in funds used for prior cost of living increases and funds previously contracted with statewide residential providers to the local authorities in an amount equal to the 2014 allocation.

(b) The Division shall allocate 5% of the remaining funds to the 24 smallest counties ranked by population. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(c) Sixty percent of the remaining funds shall be allocated to each county based on the incidence and prevalence of substance abuse based on the following:

(i) The percent of adults estimated to be binge drinkers as reported by the Behavioral Risk Factor Surveillance System (BRFSS).

(ii) The percent of adults estimated to be chronic drinkers as reported by BRFSS.

(iii) The percent of youth reporting alcohol use within the past 30 days by the most current Student Health and Risk Protection Survey (SHARP).

(iv) The percent of youth estimated to be binge drinkers by the most current SHARP.

(v) The percent of youth needing drug treatment as reported by the most current SHARP.

(d) Forty percent of the remaining funds shall be allocated to local authorities on a per capita basis, according to the most current population data available from the United States Census Bureau.

R523-4-5. LMHA/LSAA Fee Policy.

(1) Each LMHA/LSAA shall require all programs that receive federal and state funds from the Division and provide services to clients to establish a policy to set and collect fees.

(a) Each fee policy shall include:

(i) A fee reduction plan based on the client's ability to pay for services; and

(ii) A provision that clients who have received an assessment and require mental health or substance abuse services will not be denied services based on the lack of ability to pay.

(b) Any adjustments to the assessed fee shall follow the procedures approved by the LMHA/LSAA.

(2) The governing body of each LMHA/LSAA shall approve the fee policy and shall set a usual and customary rate for services rendered.

(3) All LMHA/LSAA programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(4) All clients shall be assessed fees based on:

(a) The usual and customary rate established by the LMHA/LSAA, or

(b) A negotiated contracted cost of services rendered to clients.

(5) Fees assessed to clients shall not exceed the average cost of delivering the service.

(6) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the LMHA/LSAA.

(7) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

(8) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(9) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.

R523-4-6. Collections Carryover.

(1) LMHA/LSAA programs may carry collections forward from one fiscal year to another.

(2) LMHA/LSAAs receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the LMHA/LSAA.

R523-4-7. Priorities for Services.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The Division will receive input from the Utah Behavioral Health Planning Council on priorities for services.

(2) LMHA Priorities: Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention, suicide prevention, assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

(i) Children, youth, and adults with severe mental illness;

(ii) Children, youth, and adults with acute mental illness; and

(iii) Children, youth and adults who are receiving services from other divisions within the Department of Human Services.

(c) Provisions of services to children with emotional disabilities, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-4-8. Consumers Rights.

(1) Each LMHA/LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

- (a) Consumer involvement in treatment planning.
- (b) Consumer involvement in selection of their primary therapist.
- (c) Consumer access to their individual treatment records.
- (d) Informed consent regarding medication.
- (e) Grievance procedures.

(2) This statement should also indicate the LMHA/LSAA's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The Division shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-4-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from LMHA/LSAAs; procedures for data review and dissemination; LMHA/LSAA participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division, in collaboration with the LMHA/LSAAs and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year.

R523-4-10. Allocation of Utah State Hospital Adult Bed Days to Local Mental Health Authorities.

(1) The Division herein establishes a formula to allocate to LMHAs the adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a).

(2) The formula established provides for allocation based on:

- (a) The percentage of the state's adult population located within a LMHA catchment area; and
- (b) A differential to compensate for the additional demand for hospital beds in LMHA catchment areas that are located within urban areas.

(3) The Division hereby establishes a formula to determine adult bed allocation:

- (a) The most recent available population estimates are obtained from the United States Census Bureau.
- (b) The total adult population figures for the State are identified. Adult means age 18 and over.
- (c) Adult population numbers are identified for each county.

(d) The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to Subsections 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

(i) The total number of adult beds available at the Utah State Hospital is determined.

(ii) 4.8% is subtracted from the total number of beds available for adults to be allocated as an urban differential.

(e) The total number of available adult beds minus the urban differential is multiplied by the county's percentage of the state's total adult population to determine the number of allocated beds for each county.

(f) Each catchment area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

(g) The urban differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

(h) At least one adult bed is allocated to each LMHA.

(4) In accordance with Subsection 62A-15-611(6), the Division shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

(5) Applying the formula:

(a) Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

(b) The Division is responsible to calculate the adult bed allocation.

(c) Each LMHA will be notified of changes in adult bed allocation.

(6) The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

(7) A LMHA may sell or loan its allocation of adult beds to another LMHA.

R523-4-11. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

(1) The Division establishes a formula to allocate to LMHAs the pediatric beds at the Utah State Hospital.

(2) The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a LMHA catchment area.

(3) Each LMHA shall be allocated at least one pediatric bed.

(4) The formula to determine pediatric bed allocation:

(a) The most recent available population estimates are obtained from the United States Census Bureau.

(b) The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

(c) Pediatric population figures are identified for each county.

(d) The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

(e) Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

(5) The Division shall periodically review and make changes in the formula as necessary.

(6) Applying the formula:

(a) Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

(b) Each LMHA shall be notified of changes in pediatric bed allocation.

(7) The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

(8) A LMHA may sell or loan its allocation of pediatric beds to another LMHA.

R523-4-12. LMHA/LSAA Program Standards.

(1) The Division establishes minimum standards for LMHA/LSAA programs.

(a) Each LMHA/LSAA program shall have the appropriate current license issued by the Office of Licensing, Department of Human Services.

(b) Each LMHA/LSAA shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the Division Directives for the Division of Substance Abuse and Mental Health.

(ii) Designate the projected use of state and federal contracted dollars and the 20% county match dollars.

(iii) Define the LMHA/LSAA's priorities for service and the population to be served.

(c) Each LMHA shall provide or arrange for the provision of services within the following continuum of care:

(i) Inpatient care and services (hospitalization).

(ii) Residential care and services.

(iii) Day treatment and Psycho-social rehabilitation.

(iv) Outpatient care and services.

(v) Twenty-four hour crisis care and services.

(vi) Psychotropic medication management.

(vii) Case management services.

(viii) Community supports including in-home services, housing, family support services and respite services.

(ix) Consultation, education and preventive services, including case consultation, collaboration with other county service agencies, public education and public information.

(x) Services to persons incarcerated in a county jail or other county correctional facility.

(d) Each LMHA/LSAA shall participate in a yearly on-site evaluation conducted by the Division.

(e) The LMHA/LSAA shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided.

(ii) Progress is made toward accomplishing contract goals and objectives.

(f) The LMHA/LSAA shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-4-13. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-15-602(9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-4-14. Distribution of Fee-On-Fine (DUI) Funds.

(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-4-4. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the local authority's governing board to send the funds to the local service provider.

R523-4-15. 20% Match / Maintenance of Effort Required to Be County Tax Revenue.

(1) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

(2) Failure by any county to meet its obligations under this requirement shall result in the amount of State General Funds allocated to that county by formula as described in Section R523-4-4 being lowered by the percent by which the county under-matches these funds.

KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 17-43-302; 62A-15-103; 62A-15-105(5); 62A-15-603; 62A-15-612; 62A-15-108; 62A-15-704(3)(a)(i); 62A-15-704(3)(a)(ii); 62A-15-713(7); 62A-15-1003; 17-43-204; 17-43-301(4)(a)(x); 17-43-306

Human Services, Substance Abuse
and Mental Health
R523-5
Certification of Designated Examiners
and Case Managers

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38293

FILED: 02/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health.

SUMMARY OF THE RULE OR CHANGE: This rule replaces a portion of Rule R523-1 that is being repealed. This subject matter was given its own rule so that it would be easier for interested parties to find it. This rule defines and gives guidance for the process of Designated Examiners Certification and Case Manager Certification. (DAR NOTE: The proposed repeal of Rule R523-1 is under DAR No. 38297, the proposed new Rule R523-4 is under DAR No. 38292, and the proposed new Rule R523-6 is under DAR No. 38298 in this issue, March 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Subsection 62A-15-602(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to the state budget.
- ◆ LOCAL GOVERNMENTS: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to local governments.
- ◆ SMALL BUSINESSES: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no fiscal impact on businesses.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov
- ◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.**R523-5. Certification of Designated Examiners and Case Managers.****R523-5-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance abuse and mental health services as granted by Section 62A-15-105.

R523-5-2. Purpose.

The purpose of this rule is to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health (Division).

R523-5-3. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness, as defined in Subsection 62A-15-602(3).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application, the Director will initiate a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division and pass the exam at the completion of the training with a minimum of 70% correct.

(d) The Division Director or designee will determine if experience and qualifications are satisfactory to meet the required standards. The Division Director or designee will also determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(e) Upon satisfactory completion of the required experience and training, the Division Director or designee will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-5-4. Case Manager Certification.

(1) Definitions.

(a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed or contracted by the local mental health or substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.

(b) "Qualified providers" include any individual who is a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed clinical mental health counselor, licensed marriage and family counselor, or a licensed substance abuse counselor, and employed or contracted by a local mental health authority or local substance abuse authority.

(2) A certified case manager must meet the following minimum standards:

(a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-5-4(1)(b);

(b) be at least 18 years of age;

(c) have at least a high school degree or a GED;

(d) have at least two years experience in the support of individuals with mental illness, substance abuse and/or related experience in human services.

(e) be employed or subcontracted by a local mental health authority or a local substance abuse authority;

(f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(g) completes an approved case management practicum.

(3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-5-4(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issue a written decision regarding the request for waiver.

(4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.

(a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 30 days of completion of case management requirements. The Division shall issue a certificate for three years.

(b) If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.

(5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health, substance abuse or related topics.

(a) A certified case manager shall retain CEU documentation. Documentation should not be sent to the Division unless requested for an audit.

(b) Documents to verify CEU credits include:

(i) a certificate of completion documenting continuing education validation furnished by the presenter;

(ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(6) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Rule R495-876, the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.

(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(7) If a certified case manager fails to complete the requirements for CEUs, their certificate will be revoked or allowed to expire and will not be renewed.

(8) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may

only attempt to pass the examination two times within a twelve-month period.

(9) The case managers certification must be posted and available upon request.

KEY: designated examiners, involuntary commitment, case managers

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 62A-15-105; 62A-15-602(3)

**Human Services, Substance Abuse
and Mental Health
R523-6
Medication, Psychosurgery and
Electroshock Procedures for Children,
Consumer Rights, Due Process, Family
Involvement**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38298

FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide: 1) guidance on medication procedures for children; 2) guidance on psychosurgery and electroshock therapy procedures for children; 3) guidance on family involvement; and 4) guidance on consumer rights.

SUMMARY OF THE RULE OR CHANGE: This rule replaces a portion of Rule R523-1 that is being repealed. This subject matter was given its own rule so that it would be easier for interested parties to find it. This rule provides guidance on medication therapeutic procedures for children. It also address family involvement and consumer rights. (DAR NOTE: The proposed repeal of Rule R523-1 is under DAR No. 38297, the proposed new Rule R523-4 is under DAR No. 38292, and the proposed new Rule R523-5 is under DAR No. 38293 in this issue, March 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to the state budget.

♦ LOCAL GOVERNMENTS: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to local governments.

♦ SMALL BUSINESSES: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no cost or saving to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule replaces a portion of Rule R523-1 that is being repealed, there is no fiscal impact on businesses.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Doug Thomas, Director

**R523. Human Services, Substance Abuse and Mental Health.
R523-6. Medication, Psychosurgery and Electroshock Procedures
for Children, Consumer Rights, Due Process, Family Involvement.
R523-6-1. Authority.**

This rule is promulgated under authority of Section 62A-15-105.

R523-6-2. Purpose.

- (1) The purpose of this rule is to provide:
 - (a) Guidance on medication procedures for children.
 - (b) Guidance on Psychosurgery and Electroshock Therapy Procedures for Children.
 - (c) Guidance on Family Involvement.
 - (d) Guidance on Consumer Rights.

R523-6-3. Definitions.

(1) For the purposes of this administrative rule, "guardian" means a parent, and/or legal guardian, and/or legal custodian.

(2) Neutral and Detached Fact Finder is as defined in Subsection 62A-15-703(3).

(3) The "Division" is the Division of Substance Abuse and Mental Health (Division)

(4) "Antipsychotic medication" means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

(5) A "legal custodian" is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.

(6) A "legal guardian" is one who is appointed by a testamentary appointment or by a court of law.

R523-6-4. Medication Procedures for Children, Legal Authority.

(1) The Division hereby establishes due process procedures for children prior to the administration of antipsychotic medication.

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division.

(b) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

(i) The child and guardian give consent.

(ii) The child or the guardian does not give consent, but a Designated Examiner determines that antipsychotic medication is an appropriate treatment through a due process proceeding as described in Section 62A-15-704.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to Subsection R523-6-4(1)(f) below.

(c) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with antipsychotic medications:

(i) The nature of the child's mental illness.

(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.

(v) The possible side effects, if any of the recommended treatment.

(vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and their guardian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(d) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information under Subsection R523-6-4(1)(c), and that they consent to the proposed medication treatment.

(e) If either the child or guardian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with Subsection R523-6-4(1)(g).

(f) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that they believe the child is likely to cause injury to themselves or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that they believe the child is likely to cause injury to themselves or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief, including a statement of the child's behaviors.

(C) The medication administered.

(D) The date and time the medication was begun.

(g) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of Subsection R523-6-4(1)(h).

(h) If the child or guardian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and guardian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and guardian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(i) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (guardian /foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, guardian, and any other persons present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

_____ (iv) The child, guardian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

_____ (v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

_____ (vi) If needed, the Neutral and Detached Fact Finder may ask everyone to leave the room to allow them time to deliberate.

_____ (j) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

_____ (i) The child has a mental illness; and

_____ (ii) The child is gravely disabled and in need of medication treatment for the reason that they suffer from a mental illness such that they (a) are in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifest severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health safety; and/or

_____ (iii) Without medication treatment, the child poses a likelihood of serious harm to themselves, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

_____ (iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

_____ (v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

_____ (k) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or guardian.

_____ (l) A child or guardian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

_____ (i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

_____ (ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

_____ (iii) A written decision from the panel shall be provided to the child, the child's guardian, the local mental health authority providing treatment to the child, and any other appropriate party.

_____ (m) In the event that a significant medication change is proposed, the child and/or guardian shall be provided an opportunity to

give consent in accordance to Subsection R523-6-4(1)(c) of this section. If the child and guardian refuse to give consent, a medication hearing may be initiated in accordance with Subsection R523-6-4(1)(h) of this section.

_____ (n) Medication treatment ordered pursuant to Subsection R523-6-4(1)(h) of this section may continue after the initial hearing according to the following process:

_____ (i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

_____ (ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

_____ (iii) The Neutral and Detached Fact Finder may order continued medication treatment if they find the following conditions are met:

_____ (A) The child is still mentally ill; and

_____ (B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in their ability to function in the least restrictive environment, thereby making them a substantial danger to themselves or others, and

_____ (C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

_____ (D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

_____ (iv) If the neutral and Detached Fact Finder approves continued medication treatment, they shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or guardian.

_____ (v) At the end of 12 months, the case shall again be reviewed as outlined in this Subsection R523-6-4(1)(n), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-6-5. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

_____ (1) By this rule, the Division establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy.

_____ (a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority or committed to the legal custody of the Division. The following terms are herein defined:

_____ (b) "ECT" means electroconvulsive therapy.

_____ (c) "Psychosurgery" means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

_____ (d) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with ECT or Psychosurgery:

_____ (i) The nature of the child's mental illness;

_____ (ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

_____ (iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment;

_____ (iv) The possible or probable mental health consequences to the child if recommended treatment is not administered;

(v) The possible side effects, if any, of the recommended treatment;

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects;

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable;

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery; and

(ix) When informing a child and their guardian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two Neutral and Detached Fact Finders to determine the appropriateness of such treatment.

(e) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in Subsection R523-6-5(1)(d) of this section, and that they consent or do not consent to the proposed treatment.

(f) If the guardian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(g) Regardless of whether the child or guardian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(h) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(i) Upon receipt of the request, the Director/Designee shall contact two Neutral and Detached Fact Finders, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(j) The child and guardian shall be provided notice of the hearing.

(k) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document their proposed course of treatment and reason(s) justifying the proposal in the medical record.

(l) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician. Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (guardian /foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the two Neutral and Detached Fact Finders may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, guardian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Neutral and Detached Fact Finders and the proposed treatment shall be discussed.

(v) The child, guardian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the two Neutral and Detached Fact Finders shall render a decision

(vii) If needed the two Neutral and Detached Fact Finders may ask everyone to leave the room to allow them time to deliberate.

(m) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that they (a) are in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either:

(A) a substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision shall be supported by adequate documentation. The Neutral and Detached Fact Finders shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or guardian.

(o) The child and/or guardian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Director/designee of the Division within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(p) ECT or psychosurgery may be commenced within 48 hours of the decision by the Neutral and Detached Fact Finders, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Director/designee physician renders their affirmative decision.

(q) Upon receipt of a Request, the Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays,

and legal holidays) of receipt of the Request. The Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the guardian prior to the commencement of treatment.

(r) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in R523-6-5(1)(d) through (q) shall be followed before initiating further treatment.

R523-6-6. Family Involvement.

(1) Each mental health authority shall annually prepare and submit to the Division a plan for mental health funding and service delivery. Included in the plan shall be a method to educate families concerning mental illness and substance use disorders to promote family involvement when appropriate, and with patient consent, in the services of a family member.

(2) The Division will monitor for compliance as part of the annual quality of care site visits.

R523-6-7. Consumers Rights.

(1) Each LMHA and LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

(2) This statement should also indicate the LMHA/LSAA's commitment to always treat the consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The Division shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-6-8. Declaration for Mental Health Treatment.

(1) The Division will make available information concerning the declaration for mental health treatment. Included will be information concerning available assistance in completing the document.

(2) Each LMHA shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake.

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

KEY: forced medication hearings and treatment procedures for children, due process, family involvement, consumer rights

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 62A-15-105

Insurance, Administration **R590-227-5** Filing Submission Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38291

FILED: 02/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to correct wording required on the annuity filing form.

SUMMARY OF THE RULE OR CHANGE: Subsection R590-227-5(4)(a)(i)(B) refers to Rule R590-266. The reference should be to this rule, R590-227. The wording in Subsection R590-227-5(4)(a)(i)(C) should refer to an annuity filing certification, instead it refers to a life filing certification. This needs to be corrected.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-201.1 and Section 31A-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to the wording in this rule will have no fiscal impact on the department or state's budget. Insurers are filing their forms through SERF on electronic forms that contain the correct wording. The wording just needs to be corrected in the rule.

◆ **LOCAL GOVERNMENTS:** This rule deals with the relationship between the department and their annuity insurers doing business in Utah. It will have no impact on local governments.

◆ **SMALL BUSINESSES:** The changes to this rule will have no impact on insurance agencies or other small businesses in Utah. The changes are to the rule itself. The wording in the electronic filing forms being used in SERF, through which insurers make their filings, is correct. Neither large or small businesses, nor individuals or insurance consumers will be affected by this change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to this rule will have no fiscal impact on large or small businesses, nor individuals or insurance consumers. The changes are to the rule itself. The filing forms, and certification wording on the filing forms in SERF, through which insurers make their filings, is correct.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will have no fiscal impact on large or small businesses, nor individuals or insurance consumers. The changes are to the rule itself. The filing forms, and certification wording on the filing forms in SERF, through which insurers make their filings, is correct.

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 any 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 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.

R590-227. Submission of Annuity Filings.

R590-227-5. Filing Submission Requirements.

- (1) All filings must be submitted as an electronic filing.
 - (a) All filers must use SERFF to submit a filing.
 - (b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.
- (2) A filings must be submitted by market type and type of insurance.
- (3) A filing may not include more than one type of insurance, or request filing for more than one licensee.
- (4) SERFF Filings.
 - (a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.
 - (i) Certification.
 - A. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
 - B. The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-[266]227 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".
 - C. The "Utah [~~Life Insurance Filing Certification for Individual~~ or the "Utah Life Insurance Filing Certification for Group"] Annuity Filing Certification for Individual and Group" must be properly completed, signed, and attached to the Supporting Documentation tab.

D. A filing will be rejected if the certification is false, missing, or incomplete.

E. A false certification may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) has been submitted with the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC Date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum initial premium.

(viii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Domiciliary Approval and Filing Status Information.

All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(f) Annuity Report. All annuity filings must include a sample annuity annual report.

(g) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.

KEY: annuity insurance filings

Date of Enactment or Last Substantive Amendment: [~~October 16, 2013~~]**2014**

Notice of Continuation: **March 26, 2009**

Authorizing, and Implemented or Interpreted Law: **31A-2-201; 31A-2-201.1; 31A-2-202**

**Public Service Commission,
Administration
R746-343-15
Surcharge**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38278

FILED: 02/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 54-8b-10 requires the Commission to impose a Hearing and Speech Impaired Surcharge on local exchange and mobile telephone service. The surcharge is used to provide telecommunications devices to hearing and speech impaired customers. The statutory maximum surcharge is \$0.20. The Hearing and Speech Impaired Fund, into which the surcharges are deposited, is increasing because surcharge revenues are exceeding expenses. After evaluation from the Division of Public Utilities, the recommendation was made to decrease the surcharge.

SUMMARY OF THE RULE OR CHANGE: The rule change will lower the Hearing and Speech Impaired Surcharge from \$0.05 to \$0.02. To accommodate billing cycles of telecommunications companies, the Public Service Commission anticipates making this rule change effective 05/01/2014.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-10

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule change should decrease or eliminate the growth of the Hearing and Speech Impaired Fund. The change should not impact the ability of the Commission to use the fund to provide telecommunications devices to hearing or speech-impaired customers. Additionally, this rule change should provide a small cost savings of \$0.03 per month per account to state government entities who purchase local exchange or mobile telephone service.

♦ **LOCAL GOVERNMENTS:** This rule change should provide a small cost saving of \$0.03 per month per account to local governments who purchase local exchange or mobile telephone service.

♦ **SMALL BUSINESSES:** This rule change should provide a small cost saving of \$0.03 per month per account to small businesses who purchase local exchange or mobile telephone service.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change should provide a small cost saving of \$0.03 per month per account to small businesses who purchase local exchange or mobile telephone service.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The telephone service providers who are currently collecting \$0.05 will continue to collect the lower surcharge of \$0.02. The change should not create any compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects sound fiscal management of the Hearing and Speech Impaired Fund, with a goal of maintaining collections into the fund close to anticipated

expenses. Utah customers of local exchange or mobile telephone service will experience a cost savings of \$0.03 per month per account.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
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:

◆ Jordan White by phone at 801-530-6712, or by Internet E-mail at jordanwhite@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Jordan White, Legal Counsel

R746. Public Service Commission, Administration.

R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.

R746-343-1. Purpose and Authority.

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.

A. Definitions

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.

A. Approved Application--

1. When an original application has been approved, the provider shall inform the applicant in writing of:

a. when the original application has been approved;

b. the location of the distribution center or designated place where the applicant may receive a TDD;

c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by mail. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.

A. Distribution Centers shall:

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a criminal activity as defined by Utah or federal law.

R746-343-15. Surcharge.

A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is [~~\$.05~~]\$.02 per month for

each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the

telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: public assistance, physically [handicapped]impaired, rates, telecommunications

Date of Enactment or Last Substantive Amendment: [July 1, 2013]2014

Notice of Continuation: December 10, 2012

Authorizing, and Implemented or Interpreted Law: 54-8b-10

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 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 March 31, 2014.

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 (*example*). Deletions made to the rule appear struck out with brackets surrounding them (~~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 may 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 June 29, 2014, 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.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

**Environmental Quality, Radiation
Control
R313-38-3
Clarifications or Exceptions**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38147
FILED: 02/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule specifies the regulatory requirements for radiation sources used in well logging operations.

SUMMARY OF THE RULE OR CHANGE: The exclusion of 10 CFR 70.33 in R313-38(2) refers to the wrong section. The correct reference to exclude from 10 CFR 39.13(a) is 10 CFR 70.23, since 10 CFR 70.33 is not referenced in Part 39. Regulations 10 CFR 39.61(a)(2)(i) and 10 CFR 39.73(a) contain references to Parts 19, 20, and 39. Items (5)(n)(i) and 5(n)(ii) were added to Section R313-38-3 to incorporate these parts. In Subsection R313-38-3(5)(f) the reference that reads "Sec.20.2106" is incorrect. The reference needs to be changed to read "Sec. 20.1906", which is the NRC procedure for receiving and opening packages. The changes listed above are required to meet the Nuclear Regulatory Commission's compatibility requirements for Agreement States. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 1, 2013, issue of the Utah State Bulletin, on page 20. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 10 CFR Part 39

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings for local government agencies. The proposed changes do not add or remove significant requirements that affect local government agencies. There are no local government agencies licensed to perform well logging services.
- ◆ **SMALL BUSINESSES:** Small businesses and persons other than businesses may hold a radioactive material

license, but there is no anticipated cost or savings for small businesses and persons other than businesses because proposed changes do not add or remove significant requirements.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities may hold a radioactive material license, but there is no anticipated cost savings for persons other than small businesses, or local government entities because proposed changes do not add or remove significant requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no changes in compliance costs for persons affected by Section R313-38-3. The proposed changes do not add or remove significant requirements that affect persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Rule R313-38. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
RADIATION CONTROL
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-38. Licenses and Radiation Safety Requirements for Well Logging.

R313-38-3. Clarifications or Exceptions.

For purposes of Rule R313-38, 10 CFR 39 (2013), is incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following 10 CFR sections: 39.1, 39.5, 39.8, 39.11, 39.101, and 39.103;
- (2) The exclusion of the following 10 CFR references within 10 CFR 39: Sec. 40.32, and Sec. 70.[33;]23;
- (3) The exclusion of "licensed material" in 10 CFR 39.2 definitions;
- (4) The substitution of the following wording:

(a) License for reference to NRC license;
 (b) Utah Radiation Control Rules for the references to:
 (i) The Commission's regulations;
 (ii) The NRC regulations;
 (iii) NRC regulations; and
 (iv) Pertinent Federal regulations;
 (c) Director for reference to Commission, except as stated in Subsection R313-38-3(4)(d);
 (d) Representatives of the Director for the references to the Commission in:
 (i) 10 CFR 39.33(d);
 (ii) 10 CFR 39.35(a);
 (iii) 10 CFR 39.37;
 (iv) 10 CFR 39.39(b); and
 (v) 10 CFR 39.67(f);
 (e) Director or the Director for references to:
 (i) NRC in:
 (A) 10 CFR 39.63(l);
 (B) 10 CFR 39.77(c)(1)(i) and (ii); and
 (C) 10 CFR 39.77(d)(9); and
 (ii) Appropriate NRC Regional Office in:
 (A) 10 CFR 39.77(a);
 (B) 10 CFR 39.77(c)(1); and
 (C) 10 CFR 39.77(d);
 (f) Director, the U.S. Nuclear Regulatory Commission or an Agreement State for the references to:
 (i) Commission or an Agreement State in:
 (A) 10 CFR 39.35(b); and
 (B) 10 CFR 39.43(d) and (e); and
 (ii) Commission pursuant to Sec. 39.13(c) or by an Agreement State in:
 (A) 10 CFR 39.43(c); and
 (B) 10 CFR 39.51;
 (g) In 10 CFR 39.35(d)(1), persons specifically licensed by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State for the reference to an NRC or Agreement State licensee that is authorized; and
 (h) In 10 CFR 39.35(d)(2), reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208, for the reference to the following statement:
 (i) The licensee shall submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made; and

(i) In 10 CFR 39.75(e), a U.S. Nuclear Regulatory Commission or an Agreement State for the reference to the Agreement State;
 (5) The substitution of the following Title R313 references for specific 10 CFR references:
 (a) Section R313-12-3 for the reference to Sec. 20.1003 of this chapter;
 (b) Section R313-12-54 for the reference to 10 CFR 39.17;
 (c) Subsection R313-12-55(1) for the reference to 10 CFR 39.91;
 (d) Rule R313-15 for references to:
 (i) Part 20; and
 (ii) Part 20 of this chapter;
 (e) Subsection R313-15-901(1) for the reference to Sec. 20.1901(a);
 (f) Section R313-15-906 for the reference to Sec. 20. ~~2106~~1906 of this chapter;
 (g) Sections R313-15-1201 through R313-15-1203 for the references to:
 (i) Secs. 20.2201-20.2202; and
 (ii) Sec. 20.2203;
 (h) Rule R313-18 for the reference to part 19;
 (i) Section R313-19-30 for the reference to Sec. 150.20 of this chapter;
 (j) Section R313-19-50 for the references to:
 (i) Sec. 30.50; and
 (ii) Part 21 of this chapter;
 (k) Section R313-19-71 for the reference to Sec. 30.71;
 (l) Section R313-19-100 for the references to:
 (i) 10 CFR Part 71; and
 (ii) Sec. 71.5 of this chapter; and
 (m) Section R313-22-33 for the reference to 10 CFR 30.33;
(n) Rules R313-15, R313-18, and R313-38 for corresponding references to:
(i) Parts 19, 20, and 39 of this chapter;
(ii) A copy of parts 19, 20, and 39 of NRC regulations.

KEY: radioactive materials, well logging, surveys, subsurface tracer studies
Date of Enactment or Last Substantive Amendment: 2014
Notice of Continuation: October 7, 2013
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

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 help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

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

Education, Administration **R277-117** Utah State Board of Education Protected Documents

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38295
FILED: 02/13/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(c)(iii) requires the Utah State Board of Education (USBE) to set minimum standards for alternative and pilot programs; Subsection 53A-1-402(1)(c)(iv) requires the USBE to set minimum standards for curriculum and instruction requirements; Subsection 53A-1-402(1)(e)(i) requires the USBE to set minimum standards for school productivity and cost effectiveness measures; Subsection 63G-2-305(6) allows the USBE to protect records if the disclosure would impair government procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity; and Subsection 53A-1-401(3) allows the USBE to adopt rules in accordance with its responsibilities.

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 comment has 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 continues to be necessary because it provides standards and procedures to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 02/13/2014

Education, Administration **R277-400** School Emergency Response Plans

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38296
FILED: 02/13/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There is no written comment.

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 continues to be necessary because it provides general criteria for both emergency preparedness and emergency response plans required of local education agencies in the event of natural disasters or school emergencies. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 02/13/2014

**Health, Disease Control and
Prevention, Environmental Services
R392-303
Public Geothermal Pools and Bathing
Places**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38285
FILED: 02/11/2014

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 Section 26-15-2. This section authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of public swimming pools.

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 rule was originally enacted in July 2009 in response to legislator's requests. There was a move in the legislature to exempt these types of pools a couple of years later from inspections, but the measure did not pass. Early in 2013, the Utah Department of Health (UDOH) was approached by an operator of a geothermal pool who had contacted other operators in the state. After close to five years of experience with this rule being enacted, these operators had some proposed changes to the rule that they felt through their experience would remove unnecessary regulations, but yet maintain public health. UDOH and the operators worked together to come up with proposed rule changes, and UDOH is currently in the process of modifying this rule in response to their request. UDOH has received comments from local health departments indicating the need to continue statewide enforcement of 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: As these types of pools are popular with the public, the need to regulate these pools continues to be quite important. There needs to be a safe level of use continued to be provided by geothermal pool operators as the public expectation is high. Many of the pools in the state operate as resorts, and as such need to maintain minimum levels of sanitation to prevent disease outbreaks. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 02/11/2014

Human Services, Administration **R495-882**

Termination of Parental Rights

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38280

FILED: 02/10/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary. In addition, Sections 62A-1-117 and 78A-6-1106 authorizes child support to be assigned to the Department of Human Services (DHS) when a child is placed in the custody or care of the State of Utah for at least 30 days and designates ORS as the payee for the department for such child support payments.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received 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: It is necessary to continue this rule to provide information regarding ORS' enforcement of a child support obligation that is assigned to the state when a child is placed in the custody or care of the state or with an individual other than the parent for at least 30 days. In addition, the rule explains that ORS will continue to collect child support payable to the state that accrued up to the point that parental rights were terminated for child who was in the care or custody of the State of Utah.

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

HUMAN SERVICES
ADMINISTRATION
ADMINISTRATIVE OFFICE
MULTI STATE OFFICE BUILDING
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8509, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 02/10/2014

Human Services, Recovery Services **R527-38**

Unenforceable Cases

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38277

FILED: 02/05/2014

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 62A-1-111 and 62A-11-107 give the Office of Recovery Services/Child Support Services (ORS/CSS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Federal regulations at 45 CFR 303.11 provide detailed case closure criteria for IV-D agencies. These criteria have been adopted by ORS/CSS and incorporated by reference into rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments 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: The clarifications and procedures provided in this rule continue to be necessary for the appropriate implementation of federal regulations, which are still in effect and do not appear in state statute. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Casey Cole by phone at 801-536-0360, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 02/05/2014

Insurance, Administration
R590-170
Fiduciary and Trust Account
Obligations

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

DAR FILE NO.: 38283
FILED: 02/11/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) gives the commissioner the authority to adopt rules for the implementation of Title 31A. Sections 31A-23a-406 and 31A-23a-409 do not have specific rulemaking authority. They deal with the title business and how funds received by a title agent should be maintained. This is covered under Section R590-170-5 of the rule. Sections 31A-23a-410 and 31A-23a-411.1 refer to the insurer's liability when an agent or agency does not forward the premium for a policy to them, the insurer. Subsection 31A-23a-412(2)(b)(iii)(C) gives the commissioner the authority to require certain records to be kept regarding an insurance licensee's business. Section R590-170-7 of the rule specifies accounting records that are to be maintained by the licensee. Subsection 31A-25-305(1) gives the commissioner the authority to adopt rules that will protect the integrity of a fiduciary account. The purpose of this rule is to set minimum standards that are to be followed for fiduciary and trust account obligations.

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 regarding this rule during 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: This rule sets minimum standards to be followed by licensees who hold insurer's or insured's funds in a fiduciary capacity. It is critical that these minimum

standards be maintained intact by continuing this rule to protect the funds of the payee held in trust by the licensee. Trust violations continue to occur. The department needs the standards set by this rule to regulate the marketplace. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 02/11/2014

Insurance, Administration
R590-252
Use of Senior-Specific Certifications
and Professional Designations

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

DAR FILE NO.: 38282
FILED: 02/11/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the commissioner to implement the provisions of Title 31A. Subsection 31A-23a-402(8)(a) authorizes the commissioner to define by rule unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. Section R590-252-5 of the rule lists specific prohibitions against the use of senior-specific certifications or professional designations in the sale of insurance to seniors. Section R590-252-6 of the rule specifies penalties for violation of this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the department in 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: This rule sets forth standards to protect consumers from misleading and deceptive marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advise made in connection with, an annuity, accident and health, or life insurance product. Seniors are often the focus of unfair methods of competition and deceptive acts or practices in the sale of insurance. This rule helps the department regulate against these practices. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 02/11/2014

**Money Management Council,
Administration
R628-19
Requirements for the Use of
Investment Advisers by Public
Treasurers**

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

DAR FILE NO.: 38281
FILED: 02/10/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 51-7-18(2) states that the Money Management Council may make rules establishing standards and requirements for the use of certified investment advisers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments either supporting or opposing 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: Rule R628-19 provides basic requirements for the use of an investment adviser by public treasurers when investing public money. These requirements need to be in place for the public treasurer to have a beginning place to evaluate an investment adviser that will handle public funds and to know what requirements of the Money Management Act need to be followed with regards to investment advisers. The Council reviewed this rule in the last monthly meeting and found it current and that it needed to be in place as the use of investment advisers has grown in recent years. Therefore, this rule should be continued.

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

MONEY MANAGEMENT COUNCIL
ADMINISTRATION
ROOM 180 UTAH STATE CAPITOL COMPLEX
350 N STATE ST
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Mark Watkins, Chair, Money Management Council

EFFECTIVE: 02/10/2014

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

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative 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 make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the 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.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Finance

No. 38175 (AMD): R25-7. Travel-Related Reimbursements for State Employees

Published: 01/01/2014

Effective: 02/07/2014

Commerce

Occupational and Professional Licensing

No. 38165 (AMD): R156-72. Acupuncture Licensing Act Rule

Published: 01/01/2014

Effective: 02/10/2014

Education

Administration

No. 38183 (AMD): R277-116. Utah State Board of Education Internal Audit Procedure

Published: 01/01/2014

Effective: 02/07/2014

No. 38185 (AMD): R277-437. Student Enrollment Options

Published: 01/01/2014

Effective: 02/07/2014

No. 38186 (AMD): R277-470-6. Charter School Mentoring Program

Published: 01/01/2014

Effective: 02/07/2014

No. 38187 (AMD): R277-481. Charter School Oversight, Monitoring and Appeals

Published: 01/01/2014

Effective: 02/07/2014

No. 38190 (AMD): R277-527. International Guest Teachers

Published: 01/01/2014

Effective: 02/07/2014

Environmental Quality

Radiation Control

No. 38145 (AMD): R313-22-34. Issuance of Specific Licenses

Published: 12/01/2013

Effective: 02/14/2014

Health

Disease Control and Prevention, Environmental Services

No. 38177 (AMD): R392-200-4. Site Standards

Published: 01/01/2014

Effective: 02/19/2014

No. 38089 (AMD): R392-302. Design, Construction, and Operation of Public Pools

Published: 11/15/2013

Effective: 02/14/2014

Natural Resources

Wildlife Resources

No. 38168 (AMD): R657-5. Taking Big Game

Published: 01/01/2014

Effective: 02/10/2014

No. 38169 (AMD): R657-12. Hunting and Fishing Accommodations for People with Disabilities

Published: 01/01/2014

Effective: 02/10/2014

NOTICES OF RULE EFFECTIVE DATES

No. 38167 (AMD): R657-13. Taking Fish and Crayfish
Published: 01/01/2014
Effective: 02/10/2014

No. 38170 (AMD): R657-38. Dedicated Hunter Program
Published: 01/01/2014
Effective: 02/10/2014

No. 38171 (AMD): R657-41. Conservation and Sportsman
Permits
Published: 01/01/2014
Effective: 02/10/2014

No. 38172 (NEW): R657-67. Utah Hunter Mentoring
Program
Published: 01/01/2014
Effective: 02/10/2014

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, 2014 through February 14, 2014. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules 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).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67
ATTORNEY GENERAL					
<u>Administration</u>					
R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed
COMMERCE					
<u>Consumer Protection</u>					
R152-21	Credit Services Organizations Act Rules	38266	5YR	01/29/2014	2014-4/67
R152-26	Telephone Fraud Prevention Act	38125	AMD	01/07/2014	2013-23/4
<u>Occupational and Professional Licensing</u>					
R156-1-501	Unprofessional Conduct	38157	AMD	01/21/2014	2013-24/6
R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	2014-4/68
R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
R156-69	Dentist and Dental Hygienist Practice Act Rule	38149	AMD	01/21/2014	2013-24/20
R156-72	Acupuncture Licensing Act Rule	38165	AMD	02/10/2014	2014-1/8

CRIME VICTIM REPARATIONS

Administration

R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	2014-4/75
R270-4	Government Records Access and Management Act	38259	EXT	01/27/2014	2014-4/75

EDUCATION

Administration

R277-116	Utah State Board of Education Internal Audit Procedure	38183	AMD	02/07/2014	2014-1/10
R277-117	Utah State Board of Education Protected Documents	38295	5YR	02/13/2014	Not Printed
R277-400	School Emergency Response Plans	38296	5YR	02/13/2014	Not Printed
R277-437	Student Enrollment Options	38185	AMD	02/07/2014	2014-1/12
R277-470-6	Charter School Mentoring Program	38186	AMD	02/07/2014	2014-1/14
R277-481	Charter School Oversight, Monitoring and Appeals	38187	AMD	02/07/2014	2014-1/15
R277-497	School Grading System	38111	AMD	01/08/2014	2013-23/8
R277-525	Special Educator Stipends	38114	AMD	01/08/2014	2013-23/9
R277-527	International Guest Teachers	38190	AMD	02/07/2014	2014-1/18
R277-704	Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports	38113	AMD	01/08/2014	2013-23/11
R277-709	Education Programs Serving Youth in Custody	38116	AMD	01/14/2014	2013-23/13

ENVIRONMENTAL QUALITY

Administration

R305-1	Records Access and Management	38244	NSC	01/30/2014	Not Printed
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Air Quality

R307-103-1	Administrative Procedures	38252	NSC	01/31/2014	Not Printed
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits	38061	AMD	01/09/2014	2013-21/8
R307-150	Emission Inventories	38261	5YR	01/28/2014	2014-4/70
R307-401-19	General Approval Order	37833	AMD	01/06/2014	2013-15/29
R307-401-19	General Approval Order	37833	CPR	01/06/2014	2013-23/55
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	38260	5YR	01/28/2014	2014-4/70

Drinking Water

R309-511	Hydraulic Modeling Requirements	38013	AMD	01/21/2014	2013-19/48
R309-515	Facility Design and Operation: Source Development	38012	AMD	01/21/2014	2013-19/51

Radiation Control

R313-22-34	Issuance of Specific Licenses	38145	AMD	02/14/2014	2013-23/19
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GOVERNOR

Economic Development

R357-7	Utah Capital Investment Board	38154	NEW	01/24/2014	2013-24/22
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Economic Development, Pete Suazo Utah Athletic Commission

R359-1-604	Boxing - Gloves	38033	AMD	01/24/2014	2013-20/25
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Energy Development (Office of)

R362-2	Renewable Energy Systems Tax Credits	38163	AMD	01/22/2014	2013-24/23
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HEALTH

Administration

R380-70	Standards for Electronic Exchange of Clinical Health Information	38256	5YR	01/24/2014	2014-4/71
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RULES INDEX

Center for Health Data, Health Care Statistics

R428-15 Health Data Authority Health Insurance Claims Reporting 38144 AMD 01/07/2014 2013-23/43

Children's Health Insurance Program

R382-3 Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program 38102 NEW 01/13/2014 2013-23/23

Disease Control and Prevention, Environmental Services

R392-101 Food Safety Manager Certification 38229 5YR 01/10/2014 2014-3/49
 R392-302 Design, Construction, and Operation of Public Pools 38089 AMD 02/14/2014 2013-22/69
 R392-303 Public Geothermal Pools and Bathing Places 38285 5YR 02/11/2014 Not Printed

Family Health and Preparedness, Children with Special Health Care Needs

R398-4 Cytomegalovirus Public Health Initiative 38139 NEW 01/17/2014 2013-23/25
 R398-20 Early Intervention 37984 AMD 01/28/2014 2013-19/61

Family Health and Preparedness, Emergency Medical Services

R426-100 Air Medical Service Rules 38079 REP 01/06/2014 2013-22/119

Family Health and Preparedness, Licensing

R432-2-5 Requirements for a Satellite Service Operation 38086 AMD 01/24/2014 2013-22/123

Health Care Financing, Coverage and Reimbursement Policy

R414-14 Home Health Services 38130 AMD 01/10/2014 2013-23/26
 R414-21 Physical and Occupational Therapy 38132 AMD 01/10/2014 2013-23/28
 R414-49 Dental Services 38133 AMD 01/10/2014 2013-23/30
 R414-49 Dental Services 38201 NSC 01/23/2014 Not Printed
 R414-50 Dental, Oral and Maxillofacial Surgeons 38134 REP 01/10/2014 2013-23/32
 R414-51 Dental, Orthodontia 38135 REP 01/10/2014 2013-23/33
 R414-54 Speech-Language Pathology Services 38227 5YR 01/07/2014 2014-3/50
 R414-306-5 Medical Transportation 38129 AMD 01/10/2014 2013-23/35
 R414-503 Preadmission Screening and Resident Review 38141 R&R 01/07/2014 2013-23/37
 R414-511 Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services 38103 NEW 01/13/2014 2013-23/42

HUMAN RESOURCE MANAGEMENT

Administration

R477-4-4 Recruitment and Selection for Career Service Positions 38077 AMD 01/14/2014 2013-22/124
 R477-6-9 Severance Benefit 38092 AMD 01/14/2014 2013-22/125
 R477-7 Leave 38084 AMD 01/14/2014 2013-22/126
 R477-101 Administrative Law Judge Conduct Committee 38091 NEW 01/14/2014 2013-22/129

HUMAN SERVICES

Administration

R495-882 Termination of Parental Rights 38280 5YR 02/10/2014 Not Printed

Child and Family Services

R512-41 Qualifying Adoptive Families and Adoption Placement 38263 5YR 01/28/2014 2014-4/72
 R512-75 Rules Governing Adjudication of Consumer Complaints 38264 5YR 01/28/2014 2014-4/72
 R512-306 Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program 38265 5YR 01/28/2014 2014-4/73

Recovery Services

R527-38 Unenforceable Cases 38277 5YR 02/05/2014 Not Printed

INSURANCE

Administration

R590-96	Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities	38069	AMD	01/21/2014	2013-22/137
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

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<u>ADA complaint procedures</u> Crime Victim Reparations, Administration	38258	R270-3	EXT	01/27/2014	2014-4/75
<u>administrative law judges</u> Human Resource Management, Administration	38091	R477-101	NEW	01/14/2014	2013-22/129
<u>administrative procedures</u> Environmental Quality, Air Quality	38252	R307-103-1	NSC	01/31/2014	Not Printed
<u>administrative proceedings</u> Environmental Quality, Air Quality	38252	R307-103-1	NSC	01/31/2014	Not Printed
<u>adoptions</u> Human Services, Child and Family Services	38263	R512-41	5YR	01/28/2014	2014-4/72
<u>air medical services</u> Health, Family Health and Preparedness, Emergency Medical Services	38079	R426-100	REP	01/06/2014	2013-22/119
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