

UTAH STATE BULLETIN

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

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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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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for April 2014 Medicaid Rate Changes

Effective April 1, 2014, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>.

Health Health Care Financing, Coverage and Reimbursement Policy

Physician Services

The Division of Medicaid and Health Financing (DMHF) will submit an amendment to update psychiatric services in the Medicaid State Plan. SPA 14-012-UT Physician Services, therefore, updates psychiatric services by removing psychiatric provisions already consolidated in another section of ATTACHMENTS 3.1-A and 3.1-B.

DMHF does not anticipate any impact on total annual expenditures as a result of this update.

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.

Health Health Care Financing, Coverage and Reimbursement Policy

Nursing Facility Services

The Division of Medicaid and Health Financing (DMHF) will submit a change to the Medicaid State Plan through SPA 14-011-UT, Nursing Facility Services. The purpose of this amendment is to clarify the availability of nursing facility services to Medicaid recipients. This amendment, therefore, clarifies that nursing facility services are available to individuals who are both eligible and not eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

DMHF does not anticipate any impact on total annual expenditures as a result of this clarification.

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.

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 15, 2014, 12:00 a.m., and February 28, 2014, 11:59 p.m. are included in this, the March 15, 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 April 14, 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 July 31, 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

Administrative Services, Fleet
Operations
R27-4-13
Disposal of State Vehicles

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38312
FILED: 02/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change to Section R27-4-13 is to amend the title, clarify the responsibilities of the Division of Fleet Operations, and highlight the rights of affected agencies.

SUMMARY OF THE RULE OR CHANGE: This change amends the title from "Disposal of State Vehicles" to "Reassignment or Disposal of Underutilized State Vehicles", strikes obsolete code references, and adds new language.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(d)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The change may enable the state to more effectively manage the size of the fleet, thereby causing savings to the state budget. The change does not mandate a reduction of the fleet, therefore no actual savings can be determined.
- ◆ LOCAL GOVERNMENTS: None--This change only affects the state fleet.
- ◆ SMALL BUSINESSES: None--This change only affects the state fleet.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This change only affects the state fleet.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This change does not impose compliance costs to affected persons or agencies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule affects the ability of Fleet Operations to reassign or dispose of underutilized vehicles and will not have a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
ROOM 4120 STATE OFFICE BLDG

450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Robertson by phone at 801-538-3792, by FAX at 801-359-0759, or by Internet E-mail at garyrobertson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/22/2014

AUTHORIZED BY: Sam Lee, Director

R27. Administrative Services, Fleet Operations.**R27-4. Vehicle Replacement and Expansion of State Fleet.****R27-4-13. Reassignment or Disposal of Underutilized State Vehicles.**

(1) ~~[State vehicles shall be disposed of in accordance with the requirements of Section 63A-9-801 and Rule R28-1.]~~ After vehicles have been reviewed in accordance with R27-4-12, and chronically underutilized vehicles have been identified, DFO shall initiate the steps necessary to reassign or dispose of the vehicle.

(2) At a minimum, the steps taken by DFO prior to reassignment or disposal must include:

(a) A review of the vehicle's history with the assigned agency;

(b) Review the vehicle history with, and receive direction from, the Executive Director of the Department of Administrative Services, or their designee, regarding the proposed action;

(c) If approved by the Executive Director, give notice to the agency that they have rights per R27-4-4(7) to petition the Executive Director for further review.

(3) If the assigned agency voluntarily turns in the underutilized vehicle, a capital credit shall be established in accordance with R27-4-11.

(4) If the assigned agency disagrees with the action, they may exercise their right to have a review of the proposed action with the Executive Director.

(5) If there is agreement between DFO and the Executive Director, then DFO shall give notice to the agency that it has been given authority to reassign or dispose of the vehicle in question.

(6) DFO shall reassign the vehicle to another fleet location, or begin the process of disposing of the vehicle.

KEY: fleet expansion, vehicle replacement

Date of Enactment or Last Substantive Amendment: ~~[January 25, 2011]~~ **2014**

Notice of Continuation: January 5, 2012

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(a); 63A-9-401(1)(d)(v); 63A-9-401(1)(d)(ix); 63A-9-401(1)(d)(x); 63A-9-401(1)(d)(xi); 63A-9-401(1)(d)(xii); 63A-9-401(4)(ii)

**Agriculture and Food, Regulatory
Services
R70-410
Grading and Inspection of Shell Eggs
with Standard Grade and Weight
Classes**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38315
FILED: 02/26/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule makes permanent the provisions of an emergency version of this rule that went into effect on 11/15/2013.

SUMMARY OF THE RULE OR CHANGE: The emergency rule included language to include small egg producers. The language was changed to make it more clear of which sections apply to large producers and which sections apply to small egg producers with less than 3,000 laying hens. The definitions area was cleaned up. Registration and Licensing areas needed to be modified to be in accordance with the Department's fee schedule approved by the legislature. Non-required areas of the egg quality assurance plan were removed as there were voluntary guidelines rather than required item. (DAR NOTE: The 120-day (emergency) filing on Rule R70-410 is under DAR No. 38142 in the December 1, 2013, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-3-102(5)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no cost or saving to the rule beyond the emergency rule.
- ◆ LOCAL GOVERNMENTS: Local government is not affected by this rule amendment because local government does not regulate shell eggs.
- ◆ SMALL BUSINESSES: Small business will not be affected beyond the costs of the emergency rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No businesses or local government entities will be affected by the changes in this rule beyond the costs of the emergency rule. The changes were in regards to language and formatting. These changes will not affect the fiscal impact of any business or government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes were in regards to language and formatting. These changes will not affect the fiscal impact of any business beyond the costs of the emergency rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to this rule includes minor revisions to the 120-day emergency rule. Most of the changes were in regards to language and formatting. These changes will not affect the fiscal impact of any business.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ 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
- ◆ Noel Schvaneveldt by phone at 801-538-7108, by FAX at 801-538-7124, or by Internet E-mail at nschvaneveldt@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

**R70. Agriculture and Food, Regulatory Services.
R70-410. Grading and Inspection of Shell Eggs with Standard
Grade and Weight Classes.**

R70-410-1. Authority.

~~[A:]~~(1) Promulgated under authority of Section 4-4-2.

~~(2) Large Egg Producers with more than 3,000 laying
hens shall adhere to R70-410-2 and R70-410-3 rules and:~~

~~[B:]~~(a) Adopt by reference: The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the United States Department of Agriculture for grading and inspection of shell eggs and the Standards, 7 CFR Part 56, January 1, 2005 edition, 21 CFR, 1 through 200, April 1, 2003 edition; 9 CFR 590, January 1, 2005 edition; and 7 CFR 59, January 1, 2005 edition.

~~(3) Small Egg Producers with less than 3,000 laying hens
shall adhere to R70-410 sections 2-4 rules.~~

R70-410-2. Handling and Disposition of Restricted Eggs.

(1) Restricted eggs shall be disposed of by one of the following methods at point and time of segregation:

~~[A:]~~(a) Checks and dirties must be shipped to an official egg breaking plant for further processing to egg products. Dirties may be shipped to a shell egg plant for cleaning. Checks and dirties may not be sold to restaurants, bakeries and food manufacturers, not to consumers, unless such sales are specifically exempted by

Section 15 of the Federal Egg Products Inspection Act and not prohibited by State Law.

~~[B-]~~(b) Leakers, loss and inedible eggs must be destroyed for human food purposes at the grading station or point of segregation by one of the methods listed below:

~~[1-]~~(i) Discarded and intermingled with refuse such as shells, papers, trash, etc.

~~[2-]~~(ii) Processed into an industrial product or animal food at the grading station.

~~[3-]~~(iii) Denatured or ~~[decharacterized]~~de-characterized with an approved denaturant. (Such product shipped under government supervision and received under government supervision at a plant making industrial products or animal food need not be denatured or ~~[decharacterized]~~de-characterized prior to shipment.)

~~[4-]~~(iv) Leakers, loss and inedible eggs may be shipped in shell form provided they are properly labeled and denatured by adding FD and C color to the shell or by applying a substance that will penetrate the shell and ~~[decharacterize]~~de-characterize the egg meat.

~~[C-]~~(c) Incubator rejects (eggs which have been subjected to incubation) may not be moved in shell form and must be crushed and denatured or ~~[decharacterized]~~de-characterized at point and time of removal from incubation.

~~[D-]~~(d) Blood type loss which has not diffused into the albumen may be moved to an official egg products plant in shell form without adding FD and C color to the shell provided they are properly labeled and moved directly to the egg products plant.

~~[E-]~~(e) Containers used for eggs not intended for human consumption must be labeled with the word "inedible" on the outside of the container.

~~[F-]~~(f) Other methods of disposition may be used only when approved by the Commissioner.

R70-410-3. Packaging.

~~[A-]~~(1) It is unlawful for anyone to pack eggs into a master container which does not bear all required labeling, including responsible party, or to transport or sell eggs in such container.

~~[B-]~~(2) Any person who, without prior authorization, acquires possession of a master container which bears a brand belonging to someone else shall, at his own expense, return such container to the registered owner within 30 days.

R70-410-4. Small Egg Producer Rules.

(1) SCOPE

(a) This Section is for Shell Egg Producers who intend to wholesale eggs and are USDA Exempt (flocks of 3,000 or fewer hens). The requirements are basic in design and cost in order enable the 3,000 or fewer hen egg producers to put shell eggs into commerce while maintaining Good Manufacturing Practices. It is understood that as the egg production increases, the complexity of the operation may increase and require additional facilities and/or equipment to maintain Good Manufacturing Practices.

(2) DEFINITIONS

(a) "Case" means when referring to containers, an egg case as used in commercial practice in the United States, holding thirty dozen shell eggs.

(b) "Plant" means any building, machinery, apparatus or fixture, used for the storing, grading or packing of shell eggs.

(c) "Potable water" means water that has been approved by the State Department of Health, or any agency or laboratory acceptable to the Commissioner of Agriculture as safe for drinking and food processing.

(d) "Premises" means a tract of land with building or part of building with its grounds or appurtenances.

(e) "Product" or "products" means shell eggs of domesticated chicken.

(f) "Shell eggs" means intact shell eggs of domesticated chickens.

(g) "Shell protected" means eggs which have had a protective covering such as oil applied to the shell surface.

(h) "Dirty" means an individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than one-thirty-second of the shell surface if localized, or one-sixteenth of the shell surface if scattered.

(i) "Check" means an individual egg that has a broken shell or a crack in the shell, but its shell membranes are intact and its contents do not leak.

(j) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(k) "Loss" means an egg that is inedible, cooked, frozen, contaminated, sour, musty, or an egg that contains a large blood spot, large meat spot, bloody white, green white, rot, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material.

(l) "Restricted" means eggs classified as checks, dirties, incubator rejects, inedibles, leakers and loss.

(3) LICENSE

(a) Small Egg Producers who intend to wholesale eggs shall obtain a small egg producer license in accordance with the fee schedule determined by the department and approved by the legislature pursuant to U.C.A 4-2-2(2).

(4) FACILITIES

(a) Establish a designated work area separate from domestic living areas.

(i) Acceptable designated work areas may be an area in the basement, garage, or outbuilding.

(ii) Unacceptable work areas are domestic living areas, kitchens, laundry rooms, and bathrooms.

(b) The work area requires a sanitary work surface that is smooth, durable, and easily cleanable. This work surface must be cleaned and sanitized before each use. Any sinks, drain boards, or other equipment used for the egg handling operation must be cleaned and sanitized before each use.

(c) The premises shall be kept clean and free of rodent harborage areas.

(d) Designated storage areas are required for new packaging materials, utensils, and equipment that may be used for the egg handling practices. These items must be protected from contamination (e.g. moisture, strong odors, dust, or insects).

(e) Potable water is required for egg handling practices. Individual water wells require an annual bacteriological test (i.e. coliform bacteria). Commercial bottled water may be used.

(f) Hand washing stations must be conveniently located in the egg handling work area and provided with soap and paper towels.

(g) Toilet rooms must be accessible to employees.

(h) A designated refrigerator is required. The refrigerator is not required to be new or of a commercial type and may be placed in the garage, etc. The refrigerator must be equipped with a suitable thermometer to routinely verify that the 40 degrees F to 45 degrees F egg storage temperature is maintained.

(5) EGG QUALITY ASSURANCE

(a) Each producer will develop an egg quality assurance plan that, at a minimum, includes the following:

(i) Chicks/pullets will be purchased from hatcheries that are NPIP (National Poultry Improvement Plan) "US Salmonella Enteritidis Clean" status or equivalent state plan.

(ii) Testing the flock for Salmonella Enteritidis with environmental drag swab sampling once per year per flock.

(iii) A plan on how eggs will be handled if a Salmonella Enteritidis positive test is identified.

(iv) Basic bio-security protocols for the chicken houses.

(v) Records shall be kept and monitored on a regular basis regarding newly received chicks.

(b) Producers must immediately report positive Salmonella and Avian Influenza tests to the office of the State Veterinarian.

(c) Producers may have their flocks participate in the NPIP program by contacting the Utah Department of Agriculture and Food, Division of Animal Industry.

(6) EGG HANDLING

(a) Hands must be thoroughly washed before starting egg handling and during egg handling to minimize cross-contamination of cleaned eggs.

(b) Maintain clean and dry nest boxes, change nest material as needed to reduce dirty eggs. Gather eggs at least once daily.

(c) Clean eggs as needed soon after collecting. (Cleaning eggs refrigerated below 55 degrees F may cause shells to crack or check.) Minimal cleaning protects the natural protective covering on the shell. Acceptable egg cleaning methods include:

(i) dry cleaning by lightly sanding the stains or minimal dirty areas with sand paper;

(ii) using potable water in a hand spray bottle and immediately wiping dry with a single service paper towel, and/or;

(iii) briefly rinsing with running water spray and immediately wiping dry with a single service paper towel. The wash water shall be a minimum of 90 degrees F, which is warm to the touch, and shall be at least twenty degrees warmer than the temperature of the eggs to be washed.

(d) Unacceptable cleaning methods include: submerging shell eggs in water or any other solution or using cleaners that are not food grade and approved for shell egg cleaning. The porous egg shell is not impervious to odors, chemicals, and off flavors.

(e) Refrigerate the cleaned eggs immediately to 45 degrees F or less. The cleaned eggs can be packaged later. Store packaged at eggs 45 degrees F or less.

(7) PACKAGING AND LABELING

(a) Use new packaging (pulp cartons, etc.). Packaging may be purchased online, group buying, small farm co-operatives, etc.

(b) Self-adhesive attractive labels may be easily produced on a computer. The labels must include:

(i) UDAF Permit License number.

(ii) Common name of the food.

(iii) Quantity, the number of eggs.

(iv) Name and Address of the egg producer;

(v) The statement "Keep Refrigerated";

(vi) The statement "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: Keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly."

(vii) Domesticated chicken hen eggs are subject to Grading. Quality designations and sizing weight ranges are determined by candling and weighing. (USDA Egg Grading Manual)

(viii) If the eggs are ungraded and not weighed, the packages/cartons shall not be labeled with a grade or size.

(ix) A Pull Date or Best By date may be stated. It may be hand written on the end of the carton or in a conspicuous location that is clearly discernible. Shell eggs are a perishable food item. The Pull Date must first show the month then the day of the month (e.g. Jun 14 or 06 14). Recommended dates are 30 days after production, not to exceed 45 days.

(8) DISTRIBUTION

Transport refrigerated egg packages/cartons in an easily cleanable, portable cooler with frozen gel packs to maintain 45 degrees F or less temperature until eggs are distributed to retail outlet or sold to consumers.

(9) EXEMPTIONS

Producer packer with 3,000 or more birds who is registered with USDA under the Egg Products Inspection Act.

(10) INSPECTION

All Egg Handlers and Producer Packers are subject to Inspections by the Utah Department of Agriculture and Food.

KEY: food inspections, eggs, chickens

Date of Enactment or Last Substantive Amendment: ~~March 20, 2006~~2014

Notice of Continuation: January 24, 2011

Authorizing, and implemented or Interpreted Law: 4-4-2

**Alcoholic Beverage Control,
Administration
R81-1-32
Further Application**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38323

FILED: 02/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section establishes criteria and procedures for further application when an application for a license or permit has been denied as allowed by Subsection 32B-2-202(1)(c).

SUMMARY OF THE RULE OR CHANGE: Subsections 32B-5-203(2)(c) through (f) require the commission to consider the locality, person's ability to manage, nature of the operation and any other factor in deciding whether to grant a retail license. This rule establishes the criteria for reapplication based on the reason for denial and requires the applicant to submit a report evidencing a substantial change in circumstances that previously caused denial of the application.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Subsection 32B-5-203(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment requires an applicant to submit a report evidencing a substantial change in circumstances before the commission will consider further application. The burden is on the applicant and not the state. Therefore, there is no anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This rule amendment requires an applicant to submit a report evidencing a substantial change in circumstances before the commission will consider further application. The burden is on the applicant and does not place further burden on local government. Therefore there is no anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** Any fiscal impact will be limited to businesses that are denied a retail license. However, this rule does not change their ability to reapply; it only details what is required for the commission to consider further application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment requires an applicant to submit a report evidencing a substantial change in circumstances before the commission will consider further application. The burden is on the applicant and does not put additional burden on other persons. Therefore, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Applicants that were previously denied a license or permit are required to pay application fees when seeking further application. This rule requires that further application be accompanied by a report evidencing a change in circumstance. Compliance costs for creation of a report are negligible.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any fiscal impact will be limited to businesses that are denied a retail license. However, this rule does not change their ability to reapply; it only details what is required for the commission to consider further application.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: Sal Petilos, Executive Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-32. Further Application.

(1) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial of an application.

(2) If an applicant has at any time been denied a license or permit based on the person's ability to manage and operate a retail license of the type for which the person is applying, no further application from the applicant shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial of an application.

(3) If an applicant has at any time been denied a license based on the nature or type of retail operation of the proposed retail licensee, no further application shall be considered for that license type unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial of an application.

(4) If an applicant has at any time been denied a license or permit based on any other factor the commission considers necessary, the commission may, in its discretion determine under what circumstances in which a further application will be considered.

(5) The commission may prescribe a time period between the denial and hearing a request for further application.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [~~October 30, 2013~~2014]

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-3-203(3)(c); 32B-5-304(1); 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)

**Commerce, Corporations and
Commercial Code**
R154-2
**Utah Uniform Commercial Code,
Revised Article 9 Rules**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 38320
FILED: 02/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are in response to changes made by S.B. 41 in the 2013 General Legislative Session to Section 70-9A-5.

SUMMARY OF THE RULE OR CHANGE: Model law amendments passed, and the Division needed to bring Utah Administrative Rules in compliance with Model Rules associated with Revised Article 9. Definitions were added to better serve those filing UCC forms. A more detailed description of how and when to file is added. A more clear description of searching the database is included. The new debtor name requirements are described more fully. All references to outdated technology, general filing practices in the Division, and general procedures were eliminated. Division Director discretion was eliminated. Outdated procedures and processes were eliminated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 70-9A-501 et al

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Since the filings are so similar there will be no new costs to the state.
- ◆ LOCAL GOVERNMENTS: No compliance needed.
- ◆ SMALL BUSINESSES: Filing fees remain the same.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Filing fees remain the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Fees remain the same as before.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing updates the administrative rules outlining the procedures for filing Uniform Commercial Code (UCC) records with the Utah Division of Corporations and Commercial Code (Division); for requesting records from the Division; and for the Division's maintaining and disseminating records. The rules are modeled after national standards and respond to substantive changes made in statute during the

2013 General Legislative Session (S.B. 41). Where the amended rules do not increase existing filing fees or impose any new fees for services, no fiscal impact to businesses is anticipated.

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

COMMERCE
CORPORATIONS AND COMMERCIAL CODE
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:

- ◆ Kathy Berg by phone at 801-530-6216, by FAX at 801-530-6438, or by Internet E-mail at kberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: Kathy Berg, Director

R154. Commerce, Corporations and Commercial Code.

~~**R154-2. Utah Uniform Commercial Code, Revised Article 9 Rules.**~~

~~**R154-2-100. Authority and Purpose.**~~

~~These rules are adopted by the division under the authority of Section 70A-9a-526 to enable the division to facilitate the implementation of the Revised Article 9 of the Uniform Commercial Code.~~

~~**R154-2-101. Place to File.**~~

~~The filing office is the office for filing UCC documents relating to all types of collateral except for timber to be cut, as extracted collateral and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures.~~

~~**R154-2-102. Filing Office Identification.**~~

~~In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its internet and other electronic "addresses" through usual and customary means.~~

~~102.1 On-line information service. The filing officer offers on-line information services at the agency's web site.~~

~~**R154-2-103. Office Hours.**~~

~~Although the filing office maintains regular office hours, it receives transmissions electronically 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.~~

R154-2-104. UCC Document Delivery.

UCC documents may be tendered for filing at the filing office as follows:

104.1 Personal delivery, at the filing office street address: The file time for a UCC document delivered by this method is when delivery of the UCC document is received by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

104.2 Courier delivery, at the filing office street address: The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC document is first examined by a filing officer for processing (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

104.3 Postal service delivery, to the filing office mailing address: The file time for a UCC document delivered by this method is the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

104.4 Electronic delivery. UCC documents may be submitted electronically via the agency's online services portal. The file time for a UCC document delivered by this method is the time that the filing office's system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

R154-2-105. Search Request Delivery.

UCC search requests may be delivered to the filing office by any of the means by which UCC documents may be delivered to the filing office. Requirements concerning search requests are set forth in rule R154-2-149.

R154-2-106. Filing Fees.

Filing fees will be established by the Utah State Legislature in conjunction with the annual budgetary process and current fees will be posted on the division web page and available at the filing office.

R154-2-107. Methods of Payment.

The division will enhance payment options as they become available. Filing fees and fees for public records services may be paid by the following methods:

107.1 Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.

107.2 Checks. Checks made payable to the filing office or the State of Utah, including checks in an amount to be filed in by a filing officer but not to exceed a particular amount, will be accepted for payment.

107.3 Credit card. The filing office accepts payments using credit cards issued by approved credit card issuers. A current list of approved credit card issuers is available from the filing office. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the

name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

R154-2-108. Overpayment and Underpayment Policies.

108.1 Overpayment. Overpayment will be handled in accordance with State and/or Agency refund policy.

108.2 Underpayment. Upon receipt of a document with an insufficient fee, the document shall be rejected as provided in rule R154-2-118.

R154-2-109. Fees for Public Records Services.

Fees for public records services are posted on the web page or at the filing office.

R154-2-110. New Practices and Technologies.

The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, a non-paper-based Article 9 filing system utilizing any of such technologies. In developing and utilizing technologies and practices, the filing officer shall, to the greatest extent feasible, take into account compatibility and consistency with, and whenever possible be uniform with, technologies, practices, policies and regulations adopted in connection with Article 9 filing systems in other states.

R154-2-111. The Duties and Responsibilities of the Filing Officer with Respect to the Administration of the UCC Arc Ministerial.

In accepting for filing or refusing to file a UCC document pursuant to these rules, the filing officer does none of the following:

111.1 Determine the legal sufficiency or insufficiency of a document.

111.2 Determine that a security interest in collateral exists or does not exist.

111.3 Determine that information in the document is correct or incorrect, in whole or in part.

111.4 Create a presumption that information in the document is correct or incorrect, in whole or in part.

R154-2-112. Duty to File.

Provided that there is no ground to refuse acceptance of the document under rule R154-2-115, a UCC document is filed upon its receipt by the filing officer with the filing fee and the filing officer shall promptly assign a file number to the UCC document and index it in the information management system.

R154-2-113. Grounds for Refusal of UCC Document.

The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper; it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases:

113.1 Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and

address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were indexed and rejected.

113.2 Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization type, state of organization and organization number (if it has one) or a statement that it does not have one.

113.3 Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the secured party (or assignee) names that were indexed, and a statement that secured parties with illegible or missing names or addresses were indexed and rejected.

113.4 Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

113.5 Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, is an initial filing statement.

113.6 Timeliness of continuation. A continuation shall be refused if it is not received within six months prior to expiration or the first working day after that period.

113.6.1 First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, minus six months. A continuation may be filed any time during that six month period preceding the lapse date, provided the filing office is open. In the event the filing office is closed on the lapse date or the date six months preceding the lapse date such as a weekend day or scheduled holiday the continuation may be filed on the next business day.

113.6.2 Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

113.7 Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered.

113.8 Means of communication. UCC documents communicated to the filing office by a means of communication or on altered statutory forms not authorized by the filing officer for the communication of UCC documents shall be refused.

R154-2-114. Grounds Not Warranting Refusal.

The sole grounds for the filing officer's refusal to accept a UCC document for filing are enumerated in rule R154-2-113. The following are examples of defects that do not constitute grounds for refusal to accept a document. They are not a comprehensive enumeration of defects outside the scope of permitted grounds for refusal to accept a UCC document for filing.

114.1 Errors. The UCC document contains or appears to contain a misspelling or other apparently erroneous information.

114.2 Incorrect names.

114.2.1 The UCC document appears to identify a debtor incorrectly.

114.2.2 The UCC document appears to identify a secured party or a secured party of record incorrectly.

114.3 Extraneous information. The UCC document contains additional or extraneous information of any kind.

114.4 Insufficient information. The UCC document contains less than the information required by Article 9 of the UCC, provided that the document contains the information required in rule R154-2-116.

114.5 Collateral description. The UCC document incorrectly identifies collateral, or contains an illegible or unintelligible description of collateral, or appears to contain no such description.

114.6 Excessive fee. The document is accompanied by funds in excess of the full filing fee.

R154-2-115. Time Limit.

The filing officer shall determine whether criteria exist to refuse acceptance of a UCC document for filing not later than the second business day after the date the document would have been filed had it been accepted for filing and shall index a UCC document not so refused within the same time period.

R154-2-116. Procedure Upon Refusal.

If the filing officer finds grounds under rule R154-2-115 to refuse acceptance of a UCC document, the filing officer shall return the document, if written, to the remitter. The filing officer shall send a notice that contains the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document), and a brief description of the reason for refusal to accept the document under rule R154-2-115. The notice shall be sent to a secured party or the remitter no later than the second business day after of the determination to refuse acceptance of the document. A refund may be delivered with the notice or under separate cover.

R154-2-117. Acknowledgment.

At the request of a filer or remitter who files a paper or paper-based UCC document, the filing officer shall send to said filer or remitter an acknowledgement of the record of the UCC document showing the file number assigned to it and the date and time of filing. For UCC documents not filed in paper or paper-based form the filing officer shall communicate to the filer or remitter the information in the filed document, the file number and the date and time of filing.

R154-2-118. Other Notices.

Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed

apparent potential defects in a UCC document, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. ~~THE RESPONSIBILITY FOR THE LEGAL EFFECTIVENESS OF FILING RESTS WITH FILERS AND REMITTERS AND THE FILING OFFICE BEARS NO RESPONSIBILITY FOR SUCH EFFECTIVENESS.~~

R154-2-119. Division Director Discretion.

~~The Director of the Division of Corporations and Commercial Code shall have discretionary authority according to UCA Subsection 13-1a-6(1) to refuse to file a document which is determined to be non-compliant with UCA Sections 70A-9a-501 through 70A-9a-527.~~

R154-2-120. Refusal Errors.

~~If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document that was refused for filing should not have been refused under rule R154-2-113, the filing officer will file the UCC document as provided in these rules with a filing date and time assigned when such filing occurs. The filing officer will also file an administrative action (and such demonstration of error shall constitute the secured party's authorization to do so) that states that the effective date and time of filing is the date and time the UCC document was originally tendered for filing, and sets forth such date and time.~~

R154-2-121. UCC Information Management System.

~~The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which have not lapsed. The rules in this section describe the UCC information management system.~~

R154-2-122. Primary Data Elements.

~~The primary data elements used in the UCC information management system are the following:~~

~~122.1 Identification numbers:~~

~~122.1.1 Each initial financing statement is identified by its file number. Identification of the initial financing statement is applied to written UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.~~

~~122.1.2 A UCC document other than an initial financing statement is identified by a the initial UCC file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.~~

~~122.2 Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.~~

~~122.3 Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management~~

~~system. Calculation of the lapse date of an initial financing statement is based upon the filing date.~~

~~122.4 Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.~~

~~122.5 Status of financing statement. In the information management system, each financing statement has a status of active or inactive.~~

~~122.6 Page count. The total number of pages in a UCC document is maintained in the information management system.~~

~~122.7 Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in rule R154-2-134.~~

R154-2-123. Names of Debtors Who Are Individuals.

~~For the purpose of this rule, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor or a secured party on a UCC document who is an individual.~~

~~123.1 Individual name fields. The names of individuals are stored in fields that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.~~

~~123.2 Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in rule R154-2-137, when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.~~

~~123.3 Titles and suffixes after names. Titles, suffixes or indications of status such as "M.D." and "esquire" and "senior, junior, III, etc." shall be entered in the UCC information management system.~~

~~123.4 Truncation - individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows:~~

~~123.4.1 First name: 14 characters.~~

~~123.4.2 Middle name: 14 characters.~~

~~123.4.3 Last name: 14 characters.~~

R154-2-124. Names of Debtors That Are Organizations.

~~This rule applies to the name of an organization who is a debtor or a secured party on a UCC document. These names are not case-sensitive.~~

~~124.1 Single field. The names of organizations are stored in fields that include only the names of organizations and not the names of individuals. A single field is use to store an organization name.~~

~~124.2 Truncation - organization names. The organization name field in the UCC database is fixed in length. The maximum length is 125 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed~~

length is entered as presented to the filing officer, up to the maximum length of the data entry field.

R154-2-125. Estates.

Although they are not human beings, estates are treated as if the decedent were the debtor under rule 125.

R154-2-126. Initial Financing Statement.

Upon the filing of an initial financing statement the status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

R154-2-127. Amendment.

Upon the filing of an amendment the status of the parties and the status of the financing statement shall have no effect upon the status of any debtor or secured party so long as the amendment is a collateral, address, debtor name, or secured party name change or the addition or deletion of a debtor or secured party.

R154-2-128. Procedure Upon Lapse.

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office. On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement inactive and the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

R154-2-129. XML Documents.

The division may implement, at its own discretion, appropriate means of electronic submission of UCC documents.

R154-2-130. Filing and Data Entry Procedures.

130.1 It is the policy of the filing officer to promptly file a document that conforms to these rules. Except as provided in these rules, data is transferred from a UCC document to the information management system exactly as the data are set forth in the document. Personnel who create reports in response to search requests type search criteria exactly as set forth on the search request. No effort is made to detect or correct errors of any kind.

130.2 Electronic documents must be submitted in ANSI or ASCH format.

130.3 Collateral descriptions on paper forms submitted will be entered into the data base to the first 250 characters, including spaces and punctuation, per page of initial filing and each addendum. If data on form is over 250 characters use addendum page(s) and include additional fee(s).

130.4 Collateral descriptions on electronic filings are entered up to 4,000 characters per page including spaces and punctuation.

R154-2-131. Document Indexing and Other Procedures Before Archiving.

This section contains a chronological description of the indexing procedures and correspondence procedures followed by the filing officer prior to archiving a UCC document or returning the UCC document to the remitter.

131.1 Date and time stamp. The date and time of receipt are noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system at the earliest possible time.

131.2 Cash management. Transactions necessary for payment of the filing fee are performed.

131.3 Document review. The filing office determines whether a basis exists to refuse the document under rule R154-2-115.

131.3.1 File stamp. The document is stamped. If there is no basis for refusal of the document, it is deemed filed and a unique identification number and the filing date is permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

131.3.2 Correspondence. If there is a basis for refusal of the document, notification of refusal to accept the document is prepared as provided in rule R154-2-116. If there is no basis for refusal of the document, an acknowledgment of filing is prepared as provided. If the document was tendered in person notice of refusal or acknowledgment of the filing is given to the remitter by personal or USPS delivery. If the document is tendered online such notice or acknowledgment is transmitted to the remitter by online response. For documents submitted in any other way, notice of refusal is sent to the remitter or the first secured party named on the UCC document if so requested by regular mail or by overnight courier if the remitter provides a prepaid waybill or access to the remitter's account with the courier.

131.4 Data entry. Data entry and indexing functions are performed as described in this section.

R154-2-132. Filing Date.

The filing date of a UCC document is the date the UCC document is received with the proper filing fee if the filing office is open to the public on that date or, if the filing office is not so open on that date, the filing date is the next date the filing office is so open; except that, in each case, UCC documents received after 5:00 p.m. shall be deemed received on the following day. The filing officer may perform any duty relating to the document on the filing date or on a date after filing date.

R154-2-133. Filing Time.

The filing time of a UCC document is determined as provided in rule R154-2-104.

R154-2-134. Lapse Date and Time.

A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility or manufactured housing). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if timely continuation statement is filed. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date.

R154-2-135. Errors of the Filing Officer.

The filing officer may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction is made after the filing officer has issued a certification date that includes the filing date of a corrected document, the filing

officer shall proceed as follows. A record relating to the relevant initial financing statement will be placed in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

R154-2-136. Errors Other Than Filing Office Errors.

— An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment.

R154-2-137. Data Entry of Names – Designated Fields.

— A filing should designate whether a name is a name of an individual or an organization and, if an individual, also designates the first, middle and last names. When this is done, the following rules shall apply:

— 137.1 Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC document.

— 137.2 Individual names. On a form that designates separate fields for first, middle, and last names and any suffix, the filing officer enters the names into the first, middle, and last name fields in the UCC information management system exactly as set forth on the form.

— 137.3 Designated fields encouraged. The filing office encourages the use of forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through direct data entry or through electronic means will be required to use designated name fields.

R154-2-138. Data Entry of Names – No Designated Fields.

— A UCC document that is an initial financing statement or an amendment that adds a debtor to a financing statement and that fails to specify whether the debtor is an individual or an organization should be refused by the filing office. If it is accepted for filing in error, the following rules shall apply:

— 138.1 Identification of organizations. When not set forth in a field designated for individual names, a name is treated as an organization name if it contains words or abbreviations that indicate status such as the following and similar words or abbreviations in foreign languages: association, church, college, company, co., corp., corporation, inc., limited, ltd., club, foundation, fund, L.L.C., limited liability company, institute, society, union, syndicate, GmbH, S.A. de C.V., limited partnership, L.P., limited liability partnership, L.L.P., trust, business trust, co-op, cooperative and other designations established by statutes to indicate a statutory organization. In cases where organization or individual status is not designated by the filer and is not clear, the filing officer will use his own judgment.

— 138.2 Identification of individuals. A name is entered as the name of an individual and not the name of an organization when the name is followed by a title substantially similar to one of the following titles, or the equivalent of one of the following titles in a foreign language: proprietor, sole proprietor, proprietorship, sole proprietorship, partner, general partner, president, vice president,

secretary, treasurer, M.D., O.D., D.D.S., attorney at law, Esq., accountant, CPA. In such cases, the title is not entered.

— 138.3 Individual and organization names on a single line. Where it is apparent that the name of an individual and the name of an entity are stated on a single line and not in a designated individual name field, the filing may be rejected.

— 138.4 Individual names. The failure to designate the last name of an individual debtor in an initial financing statement or an amendment adding such debtor to a financing statement should cause a filing to be refused. If the filing is accepted in error, or if only the last name is designated, the following data entry rules apply:

— 138.4.1 Freestanding initials. An initial in the first position of the name is treated as a first name. An initial in the second position of the name is treated as a middle name.

— 138.4.2 Combined initials and names. An initial and a name to which the initial apparently corresponds is entered into one name field only (e.g., "D. (David)" in the name "John D. (David) Rockefeller" is entered as "John" (first name); "D. (David)" (middle name); "Rockefeller" (last name)).

— 138.4.3 Multiple individual names on a single line. Two individual names contained in a single line are entered exactly as submitted and reflecting a single debtor.

— 138.4.4 One word names. A one word name is entered as a last name (e.g., "Cher" is treated as a last name).

— 138.4.5 Nicknames. A nickname is entered in the name field together with the name preceding the nickname, or if none, then as the first name (e.g., "William (Bill) Jones").

R154-2-139. Verification of Data Entry.

— The Division of Corporations and Commercial Code will enter the data as it is presented and encourages the filer to check the information on the database.

R154-2-140. Initial Financing Statement.

— A new record is opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time of filing.

— 140.1 The name and address of each debtor that are legibly set forth in the financing statement are entered into the record of the financing statement. Each such debtor name is included in the searchable index and is not removed until one year after the financing statement lapses. Debtor addresses might not be included in the searchable index except to the extent the filing office offers or intends to offer limited searches or limited copy requests.

— 140.2 The name and address of each secured party that are legibly set forth in the financing statement are entered into the record of the financing statement.

— 140.3 The record is indexed according to the name of the debtor(s) and is maintained for public inspection.

— 140.4 A lapse date is established for the financing statement, unless the initial financing statement indicates it is filed against a transmitting utility, and the lapse date is maintained as part of the record.

R154-2-141. Amendment.

— A record is created for the amendment that bears the file number for the initial filing statement to which it is associated and the date and time of filing.

141.1 The record of the amendment is associated with the record of the related initial financing statement in a manner that causes the amendment to be retrievable each time a record of the financing statement is retrieved.

141.2 The name and address of each additional debtor and secured parties are entered into the UCC information management system in the record of the financing statement. Each such additional debtor name is added to the searchable index and are not removed until one year after the financing statement lapses.

141.3 If the amendment is a continuation, a new lapse date is established for the financing statement and maintained as part of its record.

R154-2-142. Correction Statement.

A record is created for the correction statement that bears the file number of the original filing and the date and time of filing of the correction statement. The record of the correction statement is associated with the record of the related initial financing statement in a manner that causes the correction statement to be retrievable each time a record of the financing statement is retrieved.

R154-2-143. Global Filings.

143.1 The filing officer may accept for filing a single UCC document for the purpose of amending more than one financing statement, for one or both of the following purposes: amendment to change secured party name exactly as entered; amendment to change secured party address exactly as entered. The global filings will be accepted on active filings only.

143.2 A blanket filing shall consist of a written document describing the requested amendment on a form approved by the filing officer, and a machine readable file furnished by the remitter and created to the filing officer's specifications containing appropriate indexing information. A copy of blanket filing specifications is available from the filing officer upon request.

R154-2-144. Archives - Data Retention.

Data in the UCC information management system relating to financing statements that have lapsed are retained for five years from the date of lapse. Such data will be purged.

R154-2-145. Notice of Bankruptcy.

The filing officer takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, financing statements will lapse in the information management system as scheduled unless properly continued.

R154-2-146. Search Requests and Reports.

The filing officer maintains for public inspection a searchable index for all records of UCC documents that provides for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement to which the record relates.

R154-2-147. Search Requests.

Search requests shall contain the following information:

147.1 Name searched. A search request should set forth the full correct name of a debtor or the name variant desired to be searched and must specify whether the debtor is an individual or an organization. The full name of an individual shall consist of a first

name, a middle name or initial, and a last name, although a search request may be submitted with no middle name or initial and, if only a single name is presented (e.g., ?Cher?) it will be treated as a last name. The full name of an organization or the name variant desired to be searched. A search request will be processed using the name in the exact form it is submitted.

147.2 Requesting party. The name and address of the person to whom the search report is to be sent.

147.3 Fee. The appropriate fee shall be enclosed, payable by a method described in rule R154-2-107.

R154-2-148. Optional Information.

A UCC search request may contain the following information:

Instructions on the mode of delivery requested, if other than by ordinary mail or electronic means, will be honored if the requested mode is then made available by the filing office.

R154-2-149. Rules Applied to Search Requests.

Computerized searches will create results based on standardized search logic applied to the name presented to the filing officer by the person requesting the search. The following parameters are used to conduct searches:

149.1 There is no limit to the number of matches that may be returned in response to the search criteria.

149.2 No distinction is made between upper and lower case letters.

149.3 Punctuation marks and accents do affect the search.

149.4 The word "the" at the beginning of the search criteria is used as part of the name searched.

149.5 Business names are searched exactly as they are printed on the search request.

149.6 After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of debtors that are contained in active financing statements and, as modified, exactly match the name requested, as modified.

149.7 The division may permit "wild card" searches on all names during uncertified searches.

149.8 Legacy filings have truncated data and will need wild card searching prior to certified searching.

R154-2-150. Search Responses.

Reports created in response to a search request shall include the following:

150.1 Filing officer. Identification of the filing officer and the certification of the filing officer required by the UCC.

150.2 Report date. The date the report was generated.

150.3 Name searched. Identification of the name searched.

150.4 Certification date. The certification date applicable to the report; i.e., the date and time through the search is effective to reveal all relevant UCC documents filed on or prior to that date.

150.5 Identification of initial financing statements. Identification of each unlapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

~~150.6 History of financing statement. For each initial financing statement on the report, a listing of all related UCC documents filed by the filing officer on or prior to the certification date.~~

R154-2-151. Agricultural Liens.

~~Rules effecting agricultural liens are found at R154-1.]~~

R154-2. Utah Uniform Commercial Code, Revised Article 9 Rules.
R154-2-100. Definitions.

(1) Terms included in this Subsection R154-2-100(1) shall have the meanings stated.

(a) "Active Record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the Searchable Indexes.

(b) "Address" means:

(i) any street address, route number (may include box) or post office box number that includes a city, state, and zip code within the United States of America; or

(ii) any address that purports to be a mailing address outside the United States of America.

(c) "Amendment Statement" means a UCC record that amends the information contained in a financing statement, and includes:

(i) an assignment;

(ii) a continuation; or

(iii) a termination.

(d)(i) "Assignment Statement" means an amendment that assigns to another person all or a part of a secured party's power to authorize an amendment to a financing statement.

(ii) Any assignment statement not clearly marked on the filing form as a partial assignment shall be deemed a full assignment.

(e) "Information Statement" means a UCC record indicating that a financing statement is inaccurate or wrongfully filed.

(f) "Filing office" or "filing officer" means the Utah Division of Corporations and Commercial Code in the Utah Department of Commerce.

(g) "Filing officer statement" means a statement entered into the filing office's UCC information management system to correct an error made by the filing office.

(h) "Initial financing statement" means a UCC record by which the filing office establishes the initial record of filing of a financing statement.

(i)(i) "Remitter" means a person who tenders a UCC record to the filing officer for filing, including:

(A) the filer;

(B) an agent of the filer responsible for tendering the record for filing; or

(C) a service provider acting as a filer's representative in the filing process.

(ii) "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service.

(j) "Searchable indexes" means a list maintained in the UCC information management system that may be searched by:

(i) individual debtor name(s); or

(ii) organization debtor name(s).

(k) "Secured party of record" means:

(i) a secured party of record as defined in the UCC;

(ii) a person;

(A) who is on record as a secured party; and

(B) with respect to whom an amendment is filed purporting to delete the person as a secured party of record; or

(iii) the person identified as the assignor on an amendment that purports to be an assignment.

(l) "UCC" means the Uniform Commercial Code as adopted in this State.

(m) "UCC information management system" means the data system used by the filing office to store, index, and retrieve information relating to financing statements as described in Subsection R154-2-300 of these rules.

(n) "UCC record" means:

(i) an initial financing statement;

(ii) an amendment;

(iii) an assignment;

(iv) a continuation statement;

(v) a termination statement;

(vi) a filing officer statement;

(vii) an information statement; or

(viii) any other record maintained by the filing office, whether the record is in an electronic format or paper-based.

(o) "Unlapsed record" means a UCC record that:

(i) has been stored and indexed in the UCC information management system; and

(ii) with respect to all secured parties of record, has not lapsed under UCC Section 9-515.

(2) Any term that is not defined in Subsection R154-2-100(1) but that is defined by the UCC shall have the meaning accorded the term by the UCC.

R154-2-101. Means to Deliver UCC Records; Time of Filing.

(1)(a) Subsection R154-2-101(1)(b) does not apply to:

(i) an initial financing statement that is being filed in connection with:

(A) a manufactured-home; or

(B) a public-finance transaction; or

(ii) a financing statement that is filed:

(A) against a debtor that is a transmitting utility; and

(B) in order to affect the filing office's determination of a lapse date under Subsection R154-2-307(3) or R154-2-308.

(b) UCC records other than those identified in Subsection R154-2-101(1)(a) may be tendered for filing at the filing office as follows:

(i) Personal delivery by the Remitter or by an agent of the Remitter.

(A) The filing shall be tendered at the filing office's physical location.

(B) The time of filing shall be the time delivery is taken by the filing office.

(C) To utilize personal delivery, the Remitter shall remain at the filing office for a determination of whether the UCC record will be taken.

(D) A filing tendered by personal delivery may subsequently be rejected by the filing office.

(ii) Courier delivery by a person other than the Remitter or an agent of the Remitter.

(A) The filing shall be tendered at the filing office's physical location.

(B) If delivered when the filing office is open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the next close of business following the time of delivery.

(C) If delivered when the filing office is not open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) close of business on the next day following the time of delivery and on which the filing office is open for business.

(D) A filing tendered by courier may subsequently be rejected by the filing office.

(iii) Postal service delivery.

(A) The filing shall be mailed to the filing office's mailing address.

(B) If delivered when the filing office is open for business, the time of filing shall be the next close of business following the time of delivery.

(C) If delivered when the filing office is not open for business, the time of filing shall be the close of business on the next day following the date of delivery and on which the filing office is open for business.

(D) A filing tendered by postal service delivery may subsequently be rejected by the filing office.

(iv) Electronic mail.

(A) The filing shall be submitted to the filing office's e-mail address.

(B) If submitted when the filing office is open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the next close of business following the time of submission.

(C) If submitted when the filing office is not open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the close of business on the next day following the time of submission and on which the filing office is open for business.

(D) A filing tendered by electronic mail may subsequently be rejected by the filing office.

(v) Telefacsimile delivery.

(A) The filing shall be faxed to the filing office's fax filing telephone number.

(B) If faxed when the filing office is open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the next close of business following the time of submission.

(C) If faxed when the filing office is not open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the close of business on the next day following the time of submission and on which the filing office is open for business.

(D) A filing tendered by telefacsimile delivery may subsequently be rejected by the filing office.

(vi) Electronic filing -- XML format.

(A) This Subsection R154-2-101(1)(b)(vi) does not apply to:

(I) information statements; and

(II) filing officer statements.

(B) To submit an electronic filing in XML format, a Remitter shall first contact the filing office:

(I) to become an authorized XML Remitter; and

(II) to obtain the filing office implementation guide prescribing the XML Format acceptable for use.

(C) The time of filing shall be the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all required elements of the transmission have been received in a required format and are machine-readable.

(vii) Electronic filing -- ANSI X12 154 format.

(A) To submit an electronic filing in ANSI X12 154 format, a Remitter shall first contact the filing office to obtain the filing office implementation guide prescribing the use of ANSI X12 154.

(B) The time of filing shall be the time the on-line system acknowledges entry of all required elements of the UCC record in the proper format.

(viii) Electronic filing -- web page data entry.

(A) To submit an electronic filing through the filing office's website, a Remitter shall follow the data entry and payment procedures provided at <http://corporations.utah.gov/ucc-cfs/ucc.html>.

(B) The time of filing shall be the time the on-line system acknowledges entry of all required elements of the UCC record in the proper format.

(2)(a) This Subsection R154-2-101(2)(b) applies to:

(i) an initial financing statement that is being filed in connection with:

(A) a manufactured-home; or

(B) a public-finance transaction; or

(ii) a financing statement that is filed:

(A) against a debtor that is a transmitting utility; and

(B) in order to affect the filing office's determination of a lapse date under Subsection R154-2-307(3) or R154-2-308.

(b) To file a UCC record identified in this Subsection R154-2-101(2)(a), a Remitter shall:

(i) check the appropriate box on a UCC1 Financing Statement filed with respect to the financing statement; or

(ii) transmit the requisite information in the proper field in the applicable electronic filing.

(3) Means of communication.

(a) Regardless of the method of delivery, information submitted to the UCC filing office shall be communicated in the form of characters that are:

(i) defined in a character set forth in this Subsection R154-2-101; or

(ii) otherwise determined by the filing office to be acceptable.

(b) A financing statement or amendment form shall designate separate fields for:

(i) organization name(s) and individual name(s); and

(ii) the surname, first personal name, additional name(s)/initial(s), and suffix(es) for individual name(s).

R154-2-102. Search Request Delivery.

(1) A UCC search request may be delivered to the filing office by any of the means by which a UCC record may be delivered to the filing office.

(2) A search request may not be delivered by checking a box or otherwise including a search request in, or on, an initial financing statement, but may be delivered in, or on, a separate search request after the initial financing statement is filed.

R154-2-103. Forms.

The following forms are accepted by the filing office:

(1) any form prescribed by UCC Section 9-521;

(2) any paper-based form approved by the International Association of Commercial Administrators on or prior to April 20, 2011; and

(3) any form otherwise approved by the filing office from time to time, a list of which may be obtained on request.

R154-2-104. Fees.

All fees are established by the Utah Legislature according to the most current fee schedule.

R154-2-105. Expedited Service.

(1) Expedited service is available to process filings within one business day.

(2) Expedited service requires an additional filing fee according to the fee schedule.

R154-2-106. Methods of Payment.

(1) Filing fees and fees for public records services may be paid by the following methods:

(a) Cash, if paid in person at the filing office.

(b) Personal check, cashier's check, or money order made payable to the filing office, if the drawer (or the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion.

(c) Debit or credit card, if:

(i) the card is issued by an approved issuer; and

(ii) the Remitter provides the filing officer with:

(A) the card number;

(B) the expiration date of the card;

(C) the name of the card issuer;

(D) the name of the person or entity to whom the card is issued; and

(E) the billing address for the card.

(3) Payment by debit or credit card will not be deemed tendered until the card issuer or its agent confirms payment.

R154-2-107. Overpayment and Underpayment Policies.

(1) Overpayment shall be handled in accordance with State and/or Agency refund policy.

(2) Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall do the following:

(a) send a notice of the deficiency to the Remitter; and

(b) return the UCC record to the Remitter pursuant to Subsection R154-2-204, along with a notice of rejection.

(3)(a) A document that is rejected and returned under this Subsection R154-2-107(2) may be refiled.

(b) The time of filing shall be the time and date on which the full filing fee is received by the filing office.

R154-2-108. Public Records Services.

(1) Public records services shall be provided by the filing office on a non-discriminatory basis to any member of the public.

(2) Copies of individual UCC records, bulk copies of records, and data elements from the filing office's UCC information management system shall be made available to the public by the filing office in such forms, at such times, and for such fees as the filing office may prescribe from time to time.

(3) The filing office shall make such information regarding its prescribed forms, times, and fees as is then currently available at least weekly in every medium then available to the filing office.

R154-2-109. Fees for Public Records Services.

(1) Fees for public records services shall be established by the filing office from time to time.

(2) The filing office's fee schedule shall be available upon request.

R154-2-200. Role of Filing Officer.

Sections within the 200 series of this rule (e.g., R154-2-201) pertain to the role of the filing officer.

R154-2-201. Accepting and Refusing Records.

(1) The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial.

(2) In acting on a UCC record filed pursuant to these rules, the filing officer does not:

(a) determine the legal sufficiency or insufficiency of the UCC record;

(b) determine that information in the record is correct or incorrect, in whole or in part; or

(c) create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

R154-2-202. Time for Filing a Continuation Statement.

(1) First day permitted.

(a) The first day on which a continuation statement may be filed is the date six months prior to the date on which the related financing statement is scheduled to lapse.

(b) If no date can be generated pursuant to this Subsection R154-2-202(1)(a), the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement is scheduled to lapse.

(c) Subsections R154-2-202(1)(a) and (b) are subject to:

(i) the ability of the filing office to take delivery of the continuation statement as tendered; and

(ii) the continuation statement being properly delivered to the filing office pursuant to Subsection R154-2-101.

(2) Last day permitted.

(a) The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses.

(b) Subsection R154-2-202(2)(a) is subject to:

(i) the ability of the filing office to take delivery of the continuation statement as tendered; and

(ii) the continuation statement being properly delivered to the filing office pursuant to Subsection R154-2-101.

(3) In order to ensure that a continuation statement is timely filed, a Remitter shall effect delivery of the filing:

(a) on or prior to the last day permitted; and

(b) on a date and at a time when the filing office is open for business.

R154-2-203. Grounds for Refusal.

The filing office:

(1) shall refuse to accept a UCC record that does not provide an address that meets the minimum requirements as set forth in Subsection R154-2-100(1)(b); and

(2) may refuse to accept a UCC record for any one or more reasons as set forth in UCC Section 9-516.

R154-2-204. Procedure Upon Refusal.

(1) Except as provided in Subsection R154-2-107, if the filing officer finds grounds to refuse a UCC record, the filing officer shall not refund the filing fee.

(2) Communication of the refusal, the reason(s) for the refusal, and other related information shall be made to the Remitter:

(a)(i) as soon as practicable; and

(ii) no later than two business days after the refused UCC record is received by the filing office; and

(b)(i) by the same means as the means by which such UCC record was delivered to the filing office;

(ii) by mail; or

(iii) by such more expeditious means as the filing office may determine.

(3) Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, shall be maintained by the filing office.

R154-2-205. Refusal Errors.

(1) If a secured party or a Remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under Subsection R154-2-203:

(a) the filing officer shall file the UCC record with the filing date and time the UCC record was originally tendered for filing; and

(b) a filing officer statement record relating to the relevant initial financing statement shall be placed in the UCC information management system:

(i) on the date that the corrective action is taken; and

(ii) providing the date of the correction and an explanation of the nature of the corrective action taken.

(2) A record created under this Subsection R154-2-205(1) shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

R154-2-206. Notification of Defects.

(1) Nothing in these rules shall be construed or interpreted to prevent a filing officer from communicating to a filer or a Remitter any apparent potential defect(s) in a UCC record, regardless of whether the filing is accepted or refused for filing.

(2) The filing office is under no obligation to screen filings for defects.

(3) The responsibility for the legal effectiveness of filing rests with filers and Remitters, and the filing office bears no responsibility for such effectiveness.

R154-2-300. UCC Information Management System.

Sections within the 300 series of this rule (e.g., R154-2-301) pertain to the UCC Information Management System.

R154-2-301. General Provisions.

(1) The filing office shall use a UCC information management system to store, index, and retrieve information relating to financing statements.

(2) The UCC information management system shall include an index of the names of debtors included on financing statements that are Active Records.

R154-2-302. Primary Data Elements.

The primary data elements used in the UCC information management system are the following:

(1) Identification numbers.

(a)(i) Each initial financing statement is identified by a file number.

(ii) Identification of the initial financing statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system.

(iii) A record is created in the UCC information management system for each initial financing statement, and all information comprising such record is maintained in the system.

(iv) The record is identified by the same information assigned to the initial financing statement.

(b)(i) A UCC record other than an initial financing statement is identified by a unique file number assigned by the filing officer.

(ii) In the UCC information management system, records of all UCC records other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of Record. The type of UCC record from which data is transferred is identified in the UCC information management system from information supplied by the Remitter.

(3) Filing date and filing time.

(a) The filing date and filing time of UCC records are stored in the UCC information management system.

(b) Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC records to the UCC information management system.

(5) Page count. The total number of pages, including staff classification marks, in a UCC record is maintained in the UCC information management system.

(6) Lapse indicator.

(a) An indicator is maintained by which the UCC information management system identifies:

(i) whether or not a financing statement will lapse; and,

(ii) if applicable, when a financing statement will lapse.

(b) The lapse date is determined as provided in Subsections R154-2-307(3), 308, and 309(1).

(7) Indexes of names.

(a) The filing office maintains in the UCC information management system:

(i) a searchable index of organization debtor names; and

(ii) a searchable index of individual debtor names.

(b)(i) The filing office may also maintain a searchable index of names of secured parties of record.

(ii) Such an index need not be a separate database, but may be comprised of records in the UCC information management system identified to be included in such searchable index.

R154-2-303. Individual Debtor Names.

(1) Individual debtor names. For purposes of this rule, an individual debtor name is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(2) Individual name fields.

(a) Individual debtor names are stored in files that include only the individual debtor names and not organization debtor names.

(b) Separate data entry fields are established for:

(i) surnames (last or family names);

(ii) first personal names (given names); and

(iii) additional name(s)/initial(s) of individuals.

(c) The name of a debtor with a single name (e.g., "Cher") is treated as a surname and shall be entered in the individual surname field.

(d) The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(3) Titles, prefixes, and suffixes.

(a) Titles, prefixes (e.g., "Ms."), and suffixes or indications of status (e.g., "M.D.") are not typically part of a debtor's name.

(b) Suffixes used to distinguish between family members with otherwise identical names (e.g., "JR.") may be provided in the Suffix field.

(c) When entering a "name" into the UCC information management system, the filing office will enter data exactly as provided by the filer.

(4) Extended debtor name field.

(a) The Financing Statement form has limited space for individual debtor names. If any portion of the individual debtor name is too long for the corresponding field, the filer shall check the box that indicates the name is too long and enter the name in item 10 of the Addendum Form UCC1AD.

(b) A filing officer shall not refuse to accept a Financing Statement that lacks debtor information in item 1 and/or item 2 if the record includes an Addendum that provides a debtor name in item 10.

(5) Truncation - individual names. Personal name fields in the UCC information management system are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields are as follows:

(a) Surname: 50 characters;

(b) First personal name: 50 characters;

(c) Additional name(s)/initial(s): 50 characters; and

(d) Suffix: 5 characters.

R154-2-304. Organization Debtor Names.

(1) For purposes of these rules, an "organization debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor that is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(2) Single field.

(a) Organization debtor names are stored in files that include only organization debtor names and not individual debtor names.

(b) A single field is used to store an organization debtor name.

(3) Truncation - organization names. The organization debtor name field in the UCC information management system is fixed in length. The maximum length is 500 characters. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the organization debtor name field.

R154-2-305. Collateral Being Administered by a Decedent's Personal Representative.

(1) The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative is the name of the relevant decedent.

(2) In order for the UCC information management system to function in accordance with the usual expectations of filers and searchers, the filer shall provide the debtor name as an individual debtor name.

(3) The filing office shall enter data submitted by a filer in the fields designated by the filer exactly as the data appears in such fields.

R154-2-306. Collateral Held in a Trust.

(1) The debtor name to be provided when the collateral is held in a trust that is not a registered organization is:

(a) the name of the trust as set forth in the trust's organic record(s), if the trust has such a name; or

(b) if the trust is not so named, the name of the trust's settlor.

(2) In order for the UCC information management system to function in accordance with the usual expectations of filers and searchers:

(a) the name of a trust or of a settlor that is an organization shall be provided as an organization debtor name without regard to the nature or character of the debtor; and

(b) the name of a settlor who is an individual shall be provided as an individual debtor name without regard to the nature or character of the debtor.

(3) The filing office shall enter data submitted by a filer in the fields designated by the filer exactly as the data appears in such fields.

R154-2-307. Initial Financing Statement.

Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows.

- (1) Status of secured party.
 - (a) If no assignee is named, each secured party named on an initial financing statement shall be a secured party of record.
 - (b) If the UCC record names an assignee:
 - (i) the secured party/assignor shall not be a secured party of record; and
 - (ii) the secured party/assignee shall be a secured party of record.
 - (2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC information management system for as long as the financing statement is an Active Record.
 - (3) Status of financing statement.
 - (a) The financing statement shall be an Active Record.
 - (b) A lapse date shall be calculated as follows:
 - (i) Unless this Subsection R154-2-307(3)(b)(ii) or (iii) applies, the lapse date shall be five years from the file date.
 - (ii) If the initial financing statement indicates, as provided in Subsection R154-2-101(2), that it is filed with respect to a public-financing transaction or a manufactured-home transaction, the lapse date shall be thirty years from the file date.
 - (iii) If the initial financing statement indicates, as provided in Subsection R154-2-101(2), that it is filed against a transmitting utility, there shall be no lapse date.

R154-2-308. Amendments Generally.

- (1)(a) Unless this Subsection R154-2-308(1)(b) or (c) applies, the filing of an amendment has no effect on the status of the secured parties of record.
 - (b) If an amendment adds a debtor or a secured party, the new debtor or secured party shall be:
 - (i) added to the appropriate index; and
 - (ii) associated with the record of the financing statement in the UCC information management system.
 - (c) If an amendment designates an assignee, the filing shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system.
 - (2)(a) Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC information management system.
 - (b) A deleted secured party shall be treated by the filing office as a secured party of record, as the filing office cannot verify the effectiveness of an amendment.
 - (3) In general, the filing of an amendment does not affect the status of the financing statement.

R154-2-309. Continuation Statement.

- (1) Continuation of lapse date.
 - (a) Upon the timely filing of one or more continuation statements by one or more secured parties of record, the lapse date of the financing statement shall be postponed:
 - (i) one time only, regardless of whether more than one continuation statement is filed within a given 6-month period prior to a lapse date; and
 - (ii) for a period of five years.
 - (b) Notwithstanding the immediate postponement of the lapse date with respect to one or more secured parties of record who timely file a continuation statement within a given 6-month period prior to a lapse date, such lapse date remains effective solely for purposes of determining whether a subsequent continuation statement filed in the same 6-month period is timely.
- (2) Status. The filing of a continuation statement shall have no effect upon the status of:
 - (a) any party to the financing statement; or
 - (b) the financing statement.

R154-2-310. Termination.

The filing of a termination statement shall have no effect upon the status of:

- (1) any party to the financing statement; or
- (2) the status of the financing statement.

R154-2-311. Information Statement.

The filing of an information statement shall have no effect upon the status of:

- (1) any party to the financing statement;
- (2) the status of the financing statement itself; or
- (3) the data maintained in the UCC information management system.

R154-2-312. Procedure upon Lapse.

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date, but no action is then taken by the filing office.

R154-2-313. Removal of Record.

(1) Unless this Subsection R154-2-313(2) applies, a financing statement shall remain as an Active Record until at least one year after it lapses.

(2) If a financing statement indicates that it is to be filed against a transmitting utility, it shall remain as an Active Record until at least one year after it is terminated with respect to all secured parties of record.

(3)(a) On or after the first anniversary of a lapse or termination date:

(i) the filing office or the UCC information management system may remove the financing statement and all related UCC records from the Searchable Indexes or from the UCC information management system; and

(ii) upon such removal, the removed UCC Records shall cease to be Active Records.

(b) UCC Records removed from the UCC information management system shall be maintained as provided by filing office policy.

R154-2-400. Filing and Data Entry Procedures.

Sections within the 400 series of this rule (e.g., R154-2-401) pertain to filing and data entry procedures.

R154-2-401. Errors of the Filing Office.

(1) The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time.

(2) If a correction is made to a record of a financing statement after the filing office has issued a search report with a through date and time (see Subsection R-154-2-506(2)(d)) that is on or after the filing date and time of the financing statement, the filing office shall associate with the record of the financing statement in the UCC information management system a note. The note shall set forth the date of the corrective action and an explanation of the correction.

(3) The filing office shall allow a Remitter 30 days to notify the filing office of any data entry errors, and the filing office shall correct those errors.

R154-2-402. Data Entry.

(1) Data are entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors.

(2) Data provided in electronic form is transferred to the UCC information management system exactly as submitted by the Remitter.

R154-2-403. Verification of Data Entry.

(1) The filing office shall verify accuracy of the data from UCC records entered in accordance with Subsection R-154-2-402 into the UCC information management system.

(2) Data entry performed by a Remitter with respect to electronically filed UCC record(s) is the responsibility of the Remitter and is not verified by the filing office.

R154-2-404. Master Amendments.

(1) The filing office shall accept master amendments in writing stating the amendment requested.

(2)(a) The filing office shall provide an excel spreadsheet listing the filing(s) affected.

(b) It is the responsibility of the Remitter to acknowledge or correct the spreadsheet.

(c) Only those filings on the spreadsheet will be affected by the master amendment.

(3) The fee shall be a single filing fee established for master amendments and not per record amended.

R154-2-405. Notice of Bankruptcy.

The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

R154-2-406. Redaction of Certain Information.

The filing officer shall redact certain information from the information it provides to searchers and bulk data purchasers in accordance with Utah Code Title 63G, Chapter 2, the Utah Government Records Access and Management Act.

R154-2-500. Search Requests and Reports.

Sections within the 500 series of this rule (e.g., R154-2-501) pertain to search requests and reports.

R154-2-501. General Requirements.

(1) The filing officer maintains for public inspection a searchable index for all Active Records in the UCC information management system.

(2) Active Records shall be retrievable by:

(a) the name of the debtor; or

(b) the file number of the related initial financing statement.

(3) Each Active Record related to an initial financing statement is retrieved with the initial financing statement using either retrieval method identified in this Subsection R154-2-501(2).

R154-2-502. Search Requests -- Required Information.

(1) Search requests shall include the following:

(a) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for:

(i) organization or individual surname;

(ii) first personal name; and

(iii) additional name(s)/initial(s).

(b) Requesting party. A search request shall set forth the name and address of the person to whom the search result is to be sent.

(c) Fee. The appropriate fee shall be tendered by a method described in Subsection R154-2-106.

(d) Search logic.

(i) A search request shall specify if a search methodology other than that described in Subsection R154-2-504(2) is to be applied in conducting the search.

(ii) If no such methodology is specified, the methodology described in Subsection R154-2-504(2) shall be applied.

(2) A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is the subject of the search.

R154-2-503. Search Requests -- Optional Information.

A search request may include the following:

(1) Copies. A request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

(a) include a particular debtor address;

(b) include a particular city in the debtor address;

(c) were filed on a particular date or within a particular range of dates; or

(d) include a particular secured party name.

(2) Scope of search. A search request may ask for a search that reports all Active Records retrieved by the search rather than only Unlapsed Records retrieved by the search.

(3) Mode of delivery.

(a) A search request may specify a mode of delivery for search results.

(b) Any such request will be honored to the extent the requested mode is made available by the filing office and all requisite fees are tendered.

(4) Search request with filing.

(a) If a filer submits a search request with an initial financing statement, the search request shall be deemed to request a

search to be conducted as soon as practicable such that it would include all UCC records filed against the debtor name(s) provided on the initial financing statement on or prior to the date the initial financing statement is filed.

(b) A filer may indicate on the search request that it should be held until the filing office through date meets or exceeds the filing date of the initial financing statement.

R154-2-504. Search Methodology.

(1)(a) Search results are produced by the application of search logic to the name presented to the filing officer.

(b) Human judgment does not play a role in determining the results of the search.

(2) Standard search logic. The following rules describe the filing office's standard search logic and apply to all searches, except those where the search request specifies that a non-standard search logic be used.

(a) There is no limit to the number of matches that may be returned in response to the search criteria.

(b) No distinction is made between upper and lower case letters.

(c)(i) Punctuation marks and accents are disregarded.

(ii) For the purposes of this rule, punctuation and accents include all characters other than:

(A) the numerals 0 through 9; and

(B) the letters A through Z, whether upper or lower case, of the English alphabet.

(d) To the extent practicable as determined by the filing office's programming of its UCC information management system, words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are treated as follows:

(i) All spaces are disregarded.

(ii)(A) For first personal name and additional name(s)/initial(s) of individual debtor names:

(I) initials are treated as the logical equivalent of all names that begin with such initials; and

(II) first personal name and no additional name(s)/initial(s) is equated with all additional name(s)/initial(s).

(B) For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with:

(I) "John" or the initial "J" as the first personal name;

(II) "Smith" as the surname; and

(III) the initial "A" or any name beginning with "A" in the additional name(s)/initial(s) field.

(C) If the search request were for "John Smith" (first personal name and surname with no designation in the additional name(s)/initial(s) field), the search would retrieve all filings against individual debtors with:

(I) "John" or the initial J as the first personal name;

(II) "Smith" as the surname; and

(III) any name, any initial, or no name or initial in the additional name(s)/initial(s) field.

(iii) If the name being searched is the surname of an individual debtor name without any first personal name or additional name(s)/initial(s) provided, the search will retrieve from the UCC information management system all financing statements with individual debtor names that consist of only the surname.

(3) After using the preceding rules to modify the name being searched, the search will retrieve from the UCC information management system all Unlapsed Records, or, if requested by the searcher, all Active Records that pertain to financing statements with debtor names that exactly match the modified name being searched.

(4) Non-standard search logic. Non-standard search logic, such as a "wild card" search can be applied to a non-certified search upon request.

R154-2-505. Changes in Standard Search Logic.

If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that could alter search results, the filing office will provide public notice of such change.

R154-2-506. Search Responses.

The response to a search request shall include the following:

(1) Copies.

(a) Copies of all UCC records retrieved by the search, unless:

(i) limited copies are requested by the searcher; or

(ii) the searcher requests a certified search.

(b) Copies will reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(a) identification of the filing office responsible for the search response;

(b) unique number that identifies the search report;

(c) date and time the report was generated;

(d) through date and time, meaning the date and time at, or prior to, which a UCC record must have been filed with the filing office in order for it to be reflected on the search;

(e) certification language consistent with current language;

(f) whether the scope includes both active and unlapsed records;

(g) search logic used;

(h) search logic disclaimer language;

(i) name searched, as provided by searcher;

(j) normalized name as provided by Subsection R154-2-504; and

(k) lien type searched, with the caveat that only those liens filed in the Utah Division of Corporations and Commercial Code that are statutorily permitted may be searched.

(3) Report. The search report shall contain the following:

(a) identification of the filing office responsible for the search report;

(b) unique number assigned under this Subsection;

(c) identification of each initial financing statement, including:

(i) a listing of all related amendments;

(ii) information statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested Active Records or only Unlapsed Records);

(iii) initial financing statement file number;

_____ (iv) date and time the initial financing statement was filed;

_____ (v) lapse date;

_____ (vi) debtor name(s) appearing of record;

_____ (vii) debtor address(es) appearing of record;

_____ (viii) secured party name(s) appearing of record;

_____ (ix) secured party address(es) appearing of record;

_____ (x) indication of type of each amendment, if any;

_____ (xi) date and time each amendment, if any, was filed;

_____ (xii) amendment file number of each amendment, if any;

_____ (xiii) date and time an information statement, if any, was filed; and

_____ (xiv) date and time a filing officer statement, if any, was filed.

R154-2-600. Agricultural Liens.

_____ Rules affecting agricultural liens are found at Utah Administrative Code Section R154-1.

KEY: banking, equipment leasing, filing documents

Date of Enactment or Last Substantive Amendment: [~~March 14, 2003~~2014]

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: 70A-9a et seq.

**Commerce, Occupational and
Professional Licensing
R156-42a
Occupational Therapy Practice Act
Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38313

FILED: 02/26/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Occupational Therapy Licensing Board are recommending amendments to the rule as a result of the following. With the focus of the provision of occupational therapy services changing from in-patient to community settings, issues regarding the scope of practice of the certified occupational therapist assistant (COTA) in community settings have emerged. Board members have received queries about the ability of a COTA to discharge an individual from on-going services. The Board felt that clarification regarding discharges from service that may occur in community settings such as schools, long-term care facilities, and assisted living facilities should be placed in rule for ease of access for COTAs and occupational therapists (OTs).

SUMMARY OF THE RULE OR CHANGE: Subsection R156-42a-502(4) is added to include failing to cosign COTA discharge documentation within 30 days pursuant to Section R156-42a-601. Remaining subsection is renumbered. Section R156-42a-601 is added to provide clarification whether or not a COTA may discharge an individual from on-going service.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-42a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 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. For facilities that receive state funding, costs may be decreased because a COTA will be able to discharge patients under the criteria in the proposed amendments instead of calling in an OT at a much higher cost to simply discharge an individual from service. Due to a wide range of circumstances, the Division is not able to quantify these potential cost savings.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed occupational therapists and occupational therapy assistants. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments have the potential to decrease costs for small home health and other agencies providing occupational therapy services. Enabling a COTA to discharge a client will eliminate the higher OT costs that could be incurred by requiring the OT to discharge the individual. Due to a wide range of circumstances, the Division is not able to quantify these potential cost savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments may reduce costs for individuals paying privately for occupational therapy services because of the potential for the COTA, rather than an OT, to discharge the patient from on-going service. Due to a wide range of circumstances, the Division is not able to quantify these potential cost savings to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed occupational therapists may experience a slight decrease in income because they are not the sole individuals able to discharge an individual from on-going service. Due to a wide range of circumstances, the Division is not able to quantify any potential income reduction for occupational therapists.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, businesses that employ both occupational therapists (OTs) and certified occupational therapist assistants (COTAs) may experience some savings

by transferring patient discharge duties from the OTs to the COTAs. Any such savings will vary and cannot be estimated.

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:

♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-42a. Occupational Therapy Practice Act Rule.

R156-42a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) delegating supervision, or occupational therapy services, care or responsibilities not authorized under Title 58, Chapter 42a or this rule;

(2) engaging in or attempting to engage in the use of physical agent modalities when not competent to do so by education, training, or experience;

(3) failing to provide general supervision as set forth in Title 58, Chapter 42a and this rule; ~~and~~

(4) failing to cosign COTA discharge documentation within 30 days pursuant to R156-42a-601; and

(~~4~~)⁵ violating any provision of the American Occupational Therapy Association Code of Ethics, last amended April 2005, which is hereby adopted and incorporated by reference.

R156-42a-601. Practice Standards.

A certified occupational therapist assistant (COTA), after consultation with the supervising occupational therapist (OT), may discharge an individual from on-going service only if there is no evaluation component associated with the discharge from service. The supervising OT shall co-sign the appropriate documentation within 30 days.

KEY: licensing, occupational therapy

Date of Enactment or Last Substantive Amendment:
[~~December 22, 2009~~]2014

Notice of Continuation: January 21, 2014

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-42a-101

Health, Family Health and Preparedness, Children With Special Health Care Needs **R398-1** Newborn Screening

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38319

FILED: 02/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking simplifies the advisory committees that provide advice on newborn screening, clarifies the battery of newborn screens, and clarifies duties when an inadequate sample has been submitted.

SUMMARY OF THE RULE OR CHANGE: This rulemaking eliminates the Genetic Advisory Committee and assigns the duties to the existing Newborn Screening Advisory Committee. It assigned the advice on the battery of newborn screening tests to the Newborn Screening Advisory Committee. It clarifies that the test for Malonic Aciduria, which was previously performed under the listing of Methylmalonic acidemia, is a separate test. It clarifies the responsibilities for follow-up collection and submission of a sample when a submitted sample is inadequate.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-10-6

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Financial impacts are not anticipated for state government. Minor cost savings may be incurred due to a reduction of meetings personnel are required to schedule, prepare and attend. Malonic Aciduria is currently part of the approved Utah Department of Health (UDOH) newborn screening panel. Listing it separately from Methylmalonic acidemia does not incur a change in costs.

♦ **LOCAL GOVERNMENTS:** Financial impacts are not anticipated for local government. It does not impose additional duties or eliminate any duties.

♦ **SMALL BUSINESSES:** The number of follow-up samples has not changed, the aggregate costs to collect and submit them will not change with this rule. However, some physicians and clinics may see negligible savings as the responsibility to collect and send in a follow-up sample falls on the entity that first collected the inadequate sample, which in most cases is the hospital where the child was born.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Some parties may incur additional costs to collect and resubmit a sample if the initial sample was inadequate.

Others will save because they are no longer required to do so. However, the total cost to the public does not change as the number of inadequate samples will not change because of this rule. Malonic Aciduria is currently part of the approved UDOH newborn screening panel. Listing it separately from Methylmalonic acidemia does not incur a change in costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Inasmuch as the number of follow-up samples has not changed, the aggregate costs to collect and submit them will not change with this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These are technical amendments to the newborn screening rule to create the Newborn Screening Advisory Committee to replace the former Genetic Advisory Committee and to clarify who is responsible for necessary re-sampling. This will have no impact on business as it continues with existing practices but clarifies possible ambiguities in the old rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
CHILDREN WITH SPECIAL HEALTH CARE NEEDS
44 N MARIO CAPECCHI DR
SALT LAKE CITY, UT 84113
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kim Hart by phone at 801-584-8256, by FAX at 801-536-0966, or by Internet E-mail at kimhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.

R398-1. Newborn Screening.

R398-1-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-30(2)(a), (b), (c), (d), and (g) and 26-10-6.

R398-1-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R398-1-8.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the ongoing health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R398-1-3. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

(2) The Department of Health, after consulting with the [~~Genetic Advisory Committee~~] Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, [~~battery of tests~~] based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;

(b) Congenital Adrenal Hyperplasia;

(c) Congenital Hypothyroidism;

(d) Galactosemia;

(e) Hemoglobinopathy;

(f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1 (fumarylacetoacetate hydrolase deficiency);

- (iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);
- (iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);
- (v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);
- (vi) Homocystinuria (cystathionine beta synthase deficiency);
- (vii) Citrullinemia (arginino succinic acid synthase deficiency);
- (viii) Argininosuccinic aciduria (arginino[-]succinic acid lyase deficiency);
- (ix) Argininemia (arginase deficiency);
- (x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);
- (g) Fatty Acid Oxidation Disorders:
 - (i) Medium Chain Acyl CoA Dehydrogenase Deficiency;
 - (ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;
 - (iii) Short Chain Acyl CoA Dehydrogenase Deficiency;
 - (iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
 - (v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
 - (vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);
 - (vii) Carnitine Palmitoyl Transferase I Deficiency;
 - (viii) Carnitine Palmitoyl Transferase 2 Deficiency;
 - (ix) Carnitine Acylcarnitine Translocase Deficiency;
 - (x) Multiple Acyl CoA Dehydrogenase Deficiency;
 - (h) Organic Acids Disorders:
 - (i) Propionic Acidemia (propionyl CoA carboxylase deficiency);
 - (ii) Methylmalonic acidemia (multiple enzymes);
 - (iii) Malonic Aciduria;
 - (~~iii~~iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);
 - (~~iv~~v) 2-Methylbutyryl CoA dehydrogenase deficiency;
 - (~~v~~vi) Isobutyryl CoA dehydrogenase deficiency;
 - (~~vi~~vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;
 - (~~vii~~viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);
 - (~~viii~~ix) 3-Methylcrotonyl CoA carboxylase deficiency;
 - (~~ix~~x) 3-Ketothiolase deficiency;
 - (~~x~~xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;
 - (~~xi~~xii) Holocarboxylase synthase (multiple carboxylases) deficiency;
 - (i) Cystic Fibrosis; and
 - (j) Severe Combined Immunodeficiency syndrome.

R398-1-4. Responsibility for Collection of the First Specimen.

- (1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.
- (2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing

assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R398-1-5. Timing of Collection of First Specimen.

The first specimen shall be collected between 48 hours and five days of age. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R398-1-6. Parent Education.

The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R398-1-7. Timing of Collection of the Second Specimen.

A second specimen shall be collected between 7 and 28 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R398-1-8. Criteria for Appropriate Specimen.

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening form;

(c) Not use the Newborn Screening form beyond the date of expiration;

- (d) Not alter the Newborn Screening form in any way;
- (e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;
- (f) Apply sufficient blood to the filter paper;
- (g) Not contaminate the filter paper with any foreign substance;
- (h) Not tear, perforate, scratch, or wrinkle the filter paper;
- (i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;
- (j) Apply blood to the filter paper in a manner that does not cause caking;
- (k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;
- (l) Dry the specimen properly;
- (m) Not remove the filter paper from the Newborn Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R398-1-9. Abnormal Result.

(1) (a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the

Department within 30 days of the notification letter from the Department.

R398-1-10. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

~~[(1)---]~~If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

~~[(2)1]~~ The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R398-1-8. The responsible institution or medical home/practitioner~~[specimen]~~ shall ~~[be-]collect[ed]~~ and submit~~[ted]~~ the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form ~~[shall be labeled]~~ for testing as directed by the Department.

~~[(3)2]~~ The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

R398-1-11. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

R398-1-12. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R398-1-13. Noncompliance by Parent or Legal Guardian.

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

R398-1-14. Confidentiality and Related Information.

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R398-1-9(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R398-1-15. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

R398-1-16. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

R398-1-17. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

R398-1-18. Statutory Penalties.

As required by Subsection 63G-3-201(5): Any medical home/practitioner or ~~institution~~[~~facility~~] responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: health care, newborn screening

Date of Enactment or Last Substantive Amendment: [July 1, 2013]2014

Notice of Continuation: September 10, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-6; 26-1-30(2)(a), (b), (c), (d), and (g); 26-10-6

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-61** Home and Community-Based Services Waivers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38318

FILED: 02/27/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference changes to the Waiver for Technology Dependent/Medically Fragile Individuals, effective 07/01/2013.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference changes to the Waiver for Technology Dependent/Medically Fragile Individuals, effective 07/01/2013. These changes include an update to eligibility criteria. For example, to determine total income of waiver applicants, there is an allowance for the needs of the waiver recipient of 100% of the Health and Human Services (HHS) Poverty Guidelines. This allowance is for one person plus an amount of earned income up to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws. The waiver also adds the Self-Administered Services (SAS) Delivery method as an option for more waiver services. Recipients and their families have more flexibility and choice as the existing services of In-Home Feeding Therapy and Family Support Services are available as recipient and family directed services, in addition to the traditional agency-based option. The Department has also enhanced its quality improvement strategies to develop a Critical Incidents and Events Reporting Requirements Standard Operating Procedure to safeguard waiver recipients. Further, references to the bureaus and agencies within the State Medicaid Agency are modified to reflect current assignments. In addition, the Department has replaced the term "institution" with "facility" to accommodate current preferences within the community. The intent of these statements and references remains unchanged. Finally, the Department has clarified its offering of home health aide and private duty nursing services as extended State Plan services. Adjustments to service descriptions are in accordance with other waivers that similarly offer extended State Plan services.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Waiver for Technology Dependent/Medically Fragile Individuals, published by Centers for Medicare and Medicaid Services, 07/01/2013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate any costs to the state budget because there are no new services based on the waiver renewal.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide waiver services for Medicaid recipients.
- ◆ **SMALL BUSINESSES:** The Department neither anticipates an increase in revenue nor costs to small businesses because there are no new services based on the waiver renewal.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department neither anticipates an increase in revenue nor costs to Medicaid providers because there are no new services based on the waiver renewal. Likewise, there are no additional costs or savings to Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because there are no new services based on the waiver renewal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no impact on business because it makes no change in current policy.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-61. Home and Community-Based Services Waivers.****R414-61-1. Introduction and Authority.**

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 20[08]13;

(2) Waiver for Individuals Age 65 or Older, effective July 1, 2010;

(3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2009;

(4) Waiver for Individuals with Physical Disabilities, effective July 1, 2011;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2010;

(6) New Choices Waiver, effective July 1, 2010.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~January 24, 2012~~]2014

Notice of Continuation: February 24, 2010

Authorizing, and Implemented or Interpreted Law: 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-304-5
MAGI-Based Coverage Groups**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38317

FILED: 02/27/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify the household composition for non-tax filers using Modified Adjusted Gross Income (MAGI) methodology, and to clarify when cash support payments are counted as income.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that a dependent child or an eligible child's sibling who is age 19 or 20 and a full-time student is also included in the household size of those individuals whose household composition is based upon non-tax filer MAGI rules. This change also clarifies criteria for when a cash support payment is to be counted as income.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies household composition using MAGI-based rules.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund Medicaid services nor determine Medicaid eligibility.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies household composition using MAGI-based rules.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this change only clarifies household composition using MAGI-based rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because this change only clarifies household composition using MAGI-based rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no impact on business as our analysis does not predict any significant change in enrollment as result of this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-304. Income and Budgeting.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603, October 1, 2012 ed., which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The eligibility agency elects the option~~shall count children who are under 19 years of age and are full-time students in the household size of individuals whose household size is determined under the non-tax filer rules found~~ in 42 CFR 435.603(f)(3)(iv)(B).

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income~~;~~ cash support received by an individual when:~~from a tax filer who claims the individual as a tax dependent when that dependent is not the spouse or child of the tax filer, but only the amount that exceeds a minimal amount set by the Department.~~

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer;
and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

KEY: financial disclosures, income, budgeting

Date of Enactment or Last Substantive Amendment: ~~January 1,~~ 2014

Notice of Continuation: January 23, 2013

Authorizing, and Implemented or Interpreted Law: 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-310
Medicaid Primary Care Network
Demonstration Waiver**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38321

FILED: 02/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to renew the Primary Care Network (PCN) program under the 1115 Waiver authority as recently approved by the Centers for Medicare and Medicaid Services (CMS), and to align PCN with the provisions of the Patient Protection and Affordable Care Act (ACA) relative to determining income, income and budgeting, the filing unit, and the processing of applications and reviews for Modified Adjusted Gross Income (MAGI)-based coverage groups.

SUMMARY OF THE RULE OR CHANGE: This amendment defines general provisions for determining countable income, best estimates of income, and the PCN filing unit that uses methodologies for MAGI-based groups. It also defines provisions for accepting and processing applications, making eligibility determinations, and for processing PCN reviews to match those used for other MAGI-based groups. This change also complies with new requirements of the 1115 Demonstration Waiver, which include reducing the income limit to 100% of the Federal Poverty Level (FPL), eliminating the annual enrollment fee, and eliminating the 12-month certification period so that PCN is month-to-month eligibility. It also updates incorporations by reference and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 CFR 433.138(b) and 435.610, published by Government Printing Office, 10/01/2013
- ◆ Updates Section 1915(b) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2013
- ◆ Adds 42 CFR 435.603(c), (d), (e), (g) and (h), published by Government Printing Office, 10/01/2013
- ◆ Updates 42 CFR 435.911 and 435.912, published by Government Printing Office, 10/01/2013

- ◆ Updates 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, published by Government Printing Office, 10/01/2013
- ◆ Removes 20 CFR 416, Subpart K, Appendix, published by Government Printing Office, 04/01/2010
- ◆ Removes 42 CFR 435.907 and 435.908, published by Government Printing Office, 10/01/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state will not incur any new costs because funding was previously approved by the legislature for this ongoing program.
- ◆ **LOCAL GOVERNMENTS:** This change does not create new costs for local governments because they neither determine eligibility for the PCN program nor fund PCN services.
- ◆ **SMALL BUSINESSES:** Small businesses will not incur new costs because this change does not impose new requirements or charges on business in general.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals with income under 100% FPL will not incur any new costs as this rule continues the PCN program for these individuals. Individuals with income above 100% FPL will be transitioned off of PCN and instructed on how they can apply for insurance through the Federally Facilitated Marketplace, and about the potential to qualify for Advanced Premium Tax Credits. There is no data to determine the aggregate cost for these individuals because the Department can neither predict how much each individual might receive in Advanced Premium Tax Credits nor how much private insurance might cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An individual with income above 100% FPL could incur some costs to purchase private insurance; however, those costs may be offset with the availability of Advanced Premium Tax Credits from the federal government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is likely minimum impact on business as individuals will be moving from one form of coverage to another.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-310. Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Avenue H" means Utah's Health Insurance Marketplace for Utah employers and their employees where the employees can find information about available employer-sponsored health insurance plans, select a plan and enroll online. ~~["American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.]~~

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act.

(4) "Copayment and coinsurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(6) ~~["Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.~~

~~(7) "Department" means the Department of Health.~~

~~(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for the Primary Care Network program under contract with the Department.~~

~~(9) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through [the Utah Health Exchange] Avenue H.~~

~~(10) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program [and has paid the enrollment fee].~~

~~(11) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the eligibility agency to enroll in and receive coverage under the Primary Care Network program.~~

~~(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.~~

~~(13) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.~~

~~(14) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time to represent future income.~~

~~(15) "Open enrollment" means a period during which the eligibility agency accepts applications for the Primary Care Network program.~~

~~(16) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.~~

~~(17) "[Recertification]Review month" means the last month of the [certification]review period for an enrollee during which the eligibility agency shall redetermine eligibility for a new [certification]review period if the enrollee completes the [recertification]review process timely.~~

~~(18) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility [or through a private health insurance company that offers coverage plans specifically for students].~~

~~(19) "Utah Health Exchange" or (UHE) means an internet portal for Utah employers and their employees where the employees can find information about available employer-sponsored health insurance plans, select a plan and enroll online.~~

~~(20) "Utah's Premium Partnership for Health Insurance" or (UPP) means the program described in Rule R414-320.~~

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-~~3~~4 apply to applicants and enrollees of the PCN program except that reportable changes for PCN applicants and enrollees are defined in Subsection R414-310-3(~~3~~2).

~~(2) [Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:~~

~~(a) an individual with children under the age of 19 in the home;~~

~~(b) an individual without children under the age of 19 in the home;~~

~~(c) an individual who is enrolled in the PCN program;~~

~~(d) an individual who is enrolled in the UPP program;~~

~~(e) an individual who is enrolled in the General Assistance program;~~

~~(f) an individual who is enrolled in the Medicaid program within 30 days before the open enrollment period begins; or~~

~~(g) any group that the Department designates in advance to be consistent with efficient administration of the program.~~

~~(3) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. [Some examples of r]Reportable changes include:~~

~~(a) An enrollee in PCN begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage;~~

~~(b) An enrollee in PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare [Part A or B], or the Veteran's Administration Health Care System;~~

~~(c) [An enrollee leaves the household or dies]Changes in household income;~~

~~(d) Changes in household composition;~~
~~(e) Changes in tax filing status;~~
~~(f) Changes in the number of dependents claimed as tax dependents;~~

~~([d]g) An enrollee or the household moves out of state;~~
~~([e]h) Change of address of an enrollee or the household; or~~
~~([f]i) An enrollee enters a public institution or an institution for mental diseases.~~

~~([4]3) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-[5]6 and R414-301-[6]7.~~

~~([5]4) An enrollee in PCN is responsible for paying any required copayments or coinsurance amounts to providers for medical services that the enrollee receives that are covered under PCN.~~

R414-310-4. General Eligibility Requirements.

~~(1) The provisions of Sections R414-302-[4]3, R414-302-[2]4, R414-302-[5]7, and R414-302-[6]8 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to applicants and enrollees of PCN.~~

~~(2) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Section R414-302-[4]3 is not eligible for any services or benefits under PCN.~~

~~(3) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.~~

~~(a) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN.~~

~~(b) An individual must apply for the PCN program before he turns 65 years of age.~~

~~(c) Enrollment shall end effective the end of the month in which an individual turns 65 years of age.~~

~~(4) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency limits the number it enrolls according to the funds available for the program and may stop enrollment at any time.~~

~~(a) The open enrollment period may be limited to:~~

~~(i) individuals with children under the age of 19 in the home;~~

~~(ii) individuals without children under the age of 19 in the home.~~

~~(b) The eligibility agency may not accept applications or maintain waiting lists during a period that enrollment of new individuals is stopped.~~

~~(5) The provisions of Subsection R414-302-6(1) and (4) apply to applicants and enrollees of PCN who are residents of institutions.~~

~~([3]6) An applicant or enrollee is not required to provide Duty of Support information to enroll in PCN. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the PCN program. [An individual who would be eligible for Medicaid, but fails to cooperate with Duty of Support requirements required by the Medicaid program, cannot enroll in PCN.]~~

~~(4) An individual who must pay a spenddown or premium to receive Medicaid can enroll in PCN if:~~

~~(a) the individual meets PCN program eligibility criteria in any month that the individual does not receive Medicaid; and~~

~~(b) the Department does not stop enrollment under the provisions of Subsection R414-310-16(2). If the Department stops enrollment, the individual must wait for an open enrollment period to enroll in the PCN program.]~~

R414-310-5. Verification and Information Exchange.

~~(1) The provisions of Section R414-308-4 regarding verification of eligibility factors apply to applicants and enrollees of PCN.~~

~~(2) The Department shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-[4]5.~~

~~(3) The Department shall enter into agreements with other government agencies as outlined in Section R414-301-3.~~

[R414-310-6. Residents of Institutions.

~~The provisions of Subsection R414-302-4(1) and (4) apply to applicants and enrollees of PCN.~~

[R414-310-[7]6. Creditable Health Coverage.

~~(1) The Department adopts and incorporates by reference 42 CFR 433.138(b) and 435.610, [2010]October 1, 2013 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2013[2011, which are incorporated by reference.]~~

~~(2) An applicant[Subject to Subsection R414-310-7(10), an individual] who is covered under a group health plan or other creditable health insurance coverage[;] as defined in 29 CFR 2590.701-4, [2010]July 1, 2013 ed., [at the time of application-]is not eligible for enrollment in PCN. This includes coverage under [Medicare Part A or B,-]student health insurance[;] and the Veteran's Administration Health Care System.[Nevertheless, a]~~

~~(a) An individual who is enrolled in the Utah Health Insurance Pool or who can receive health coverage through Indian Health Services may enroll in PCN.~~

~~(b) An individual who could enroll in Medicare is not eligible for enrollment in PCN, even if the individual must wait for a Medicare open enrollment period to apply.~~

~~(c) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN as long as the individual applies for and takes all necessary steps to enroll. Eligibility for PCN ends once the individual's coverage in the VA Health Care System begins.~~

~~(d) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.~~

~~(3) [The eligibility agency determines PCN eligibility for an]An individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage through an employer or a spouse's employer [as follows:]is not eligible for PCN if~~

~~(a) If the individual's cost for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through Avenue H[UHE], does not exceed 15% of the [household's-]countable [gross]MAGI-based income for the individual's household[- as defined in this rule, the individual is not eligible for PCN].~~

~~(a) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.~~

~~(b) The eligibility agency will include in the cost of coverage for the spouse, the cost to enroll the employee, if the employee must be enrolled to enroll the spouse.~~

~~[(b) If the individual's cost for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through UHE, is 5% or more of the household's countable gross income, the individual may enroll in the employer-sponsored health insurance plan and the UPP program during an UPP open enrollment period. The employer-sponsored health plan must meet the requirements of Subsection R414-320-2(18):~~

~~(c) If the individual's cost for the least expensive health insurance plan offered by the employer, or for the employer's default plan offered through UHE, exceeds 15% of the household's countable gross income, the individual may choose to enroll in either PCN or the UPP program. The following conditions apply:~~

~~(i) to enroll in UPP, the employer-sponsored health insurance plan the individual enrolls in, or the plan the employee selects through UHE, must meet the requirements of Subsection R414-320-2(18); and~~

~~(ii) enrollment for the program that the individual chooses to enroll in has not been stopped under the provisions of Subsections R414-310-16(2) or R414-320-16(2);~~

~~(d) If none of the plans offered by the employer, either directly or through UHE, meet the requirements of Subsection R414-320-2(18), and the individual's cost to enroll exceeds 15% of the household's countable gross income, the individual may only enroll in the PCN program during a PCN open enrollment period.~~

~~[(4)c] The eligibility agency considers the individual to have access to coverage [even when the employer only offers coverage during an open enrollment period,] if the individual has had at least one opportunity to enroll [or if the first opportunity to enroll occurs within 30 days of either the date of application or the first day of the recertification month:~~

~~(5) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible that must be met before it will pay any claims. If the employee must be enrolled to enroll the spouse, the cost of coverage for the spouse includes the cost to enroll the employee and the spouse.~~

~~(6) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in PCN, even when the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.~~

~~(7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in PCN. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for PCN ends once the individual's coverage in the VA Health Care System begins.~~

~~(8) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.]~~

~~[(9)4] An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for [six months]180 days from the date the coverage ended [after the date that the earlier health insurance ends]. The eligibility agency shall not apply a 180-day ineligibility period in the following situations:~~

~~(a) Voluntary termination of COBRA.~~

~~(b) Voluntary termination of Utah Comprehensive Health Insurance Pool coverage.~~

~~[(a)](5) To be eligible to enroll in PCN, the [six-month]180-day ineligibility period must end by the earlier of the following dates or the eligibility agency shall deny the application:~~

~~[(i)a] the last day of the open enrollment period during which the individual applies for PCN; or~~

~~[(ii)b] the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.~~

~~[(b) If the six-month ineligibility period does not end by the earlier of the dates mentioned in Subsection R414-310-7(9)(a)(i) or (ii), the eligibility agency shall deny the application:~~

~~[(c) Enrollment in PCN may not begin before [The effective date of enrollment in PCN must be after] the [six-month]180-day ineligibility period ends.~~

~~(10) An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the State Health Insurance Pool, or who is involuntarily terminated from an employer-sponsored health plan may be eligible for PCN without a six-month ineligibility period.~~

~~(a) An individual is eligible to enroll in PCN if the individual's health insurance coverage expires before the end of the calendar month that follows the month in which he applies for PCN.~~

~~(b) The PCN enrollment date must be after health insurance coverage ends.~~

~~(11) Notwithstanding the limitations in Section R414-310-7, an individual with creditable health coverage operated or financed by Indian Health Services may enroll in PCN.~~

~~(12) An individual must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.~~

~~(13) The eligibility agency shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify in the program.~~

~~]~~

R414-310-[8]7. Household Composition and Income Provisions.

~~(1) The eligibility agency determines household composition and countable household income according to the provisions in R414-304-5. [The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for PCN:~~

~~(a) the individual;~~

~~(b) the individual's spouse living with the individual;~~

~~(c) any children of the individual or the individual's spouse who are under the age of 19 and living with the individual; and~~

~~(d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.]~~

~~(2) For an individual to be eligible to enroll in PCN, countable MAGI-based income for the individual must be equal to or less than 100% of the federal poverty guideline for the applicable household size. [A household member who is temporarily absent for~~

schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.]

[~~_____ (3) Any household member defined in Subsection R414-310-8(1) who is not a U.S. citizen or national, or who is not a qualified resident alien is included in the household size. The eligibility agency counts that individual's income the same way that it counts the income of a U.S. citizen, national, or qualified resident alien.~~

R414-310-9. Age Requirement.

~~_____ (1) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.~~

~~_____ (2) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN. The effective date of enrollment for an applicant who meets the eligibility criteria for PCN and who turns 19 or 65 years of age is defined in Section R414-310-15.~~

R414-310-10. Income Provisions.

~~_____ (1) To be eligible to enroll in PCN, a household's countable gross income must be equal to or less than 150% of the federal, non-farm, poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under PCN. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. The eligibility agency may not count any income that is excluded under this section:~~

~~_____ (2) The eligibility agency shall treat any income in a trust that is available to, or is received by a household member as income of the person for whom it is received. It is countable income if the eligibility agency counts that person's income to determine eligibility.~~

~~_____ (3) The eligibility agency shall count as income payments that a household member receives from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3, Employment Support Act.~~

~~_____ (4) The eligibility agency shall count rental income. The eligibility agency may deduct the following expenses:~~

~~_____ (a) taxes and attorney fees needed to make the income available;~~

~~_____ (b) upkeep and repair costs necessary to maintain the current value of the property;~~

~~_____ (c) utility costs only if they are paid by the owner; and~~

~~_____ (d) interest only on a loan or mortgage secured by the rental property.~~

~~_____ (5) The eligibility agency shall count as income cash contributions made by non-household members unless the parties have a signed written agreement for repayment of the funds.~~

~~_____ (6) The eligibility agency shall count as income the interest earned from payments made under a sales contract or a loan agreement to the extent that the household member continues to receive these payments during the certification period.~~

~~_____ (7) The eligibility agency shall count as income needs-based Veteran's pensions. Nevertheless, the agency counts only the portion of a Veteran's Administration check to which the individual is legally entitled. Any portion of the payment that is for other family members counts as that family member's income.~~

~~_____ (8) The eligibility agency shall count solely as the child's income child support payments that a parent receives for a dependent child when that child lives in that parent's home.~~

~~_____ (9) The eligibility agency may only count in-kind income when a non-household member provides goods or services to the individual in exchange for services the individual performs.~~

~~_____ (10) The eligibility agency shall count as income Supplemental Security Income and State Supplemental payments.~~

~~_____ (11) The eligibility agency shall count as income, unearned and earned income that is deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.~~

~~_____ (12) The eligibility agency may not count as income payments that are excluded under 20 CFR 416 Subpart K, Appendix, 2010 edition, which is incorporated by reference.~~

~~_____ (13) The eligibility agency may not count as income payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.~~

~~_____ (14) The eligibility agency may not count as income death benefits to the extent that the funds are spent on the deceased person's burial or last illness.~~

~~_____ (15) The eligibility agency may not count as income a bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment.~~

~~_____ (16) The eligibility agency may not count as income Child Care Assistance under Title XX.~~

~~_____ (17) The eligibility agency may not count as income reimbursements of Medicare premiums that an individual receives from the Social Security Administration.~~

~~_____ (18) The eligibility agency may only count earned and unearned income of an individual's spouse who is under 19 years of age when that spouse is the head of the household.~~

~~_____ (19) The eligibility agency may not count as income educational income, such as educational loans, grants, scholarships, and work-study programs. The individual must verify enrollment in an educational program.~~

~~_____ (20) The eligibility agency may not count as income reimbursements for employee work expenses incurred by an individual.~~

~~_____ (21) The eligibility agency may not count as income the value of food stamp assistance.~~

~~_____ (22) The eligibility agency may not count income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census.~~

~~]~~

R414-310-[H]8. Budgeting.

~~(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference. [Subject to the limitation in Subsection R414-310-10(18), the eligibility agency counts the gross income of all household members to~~

determine the eligibility of the applicant or enrollee, unless the income is excluded under this rule. The agency only deducts required expenses from the gross income to make an income available to the individual. No other deductions are allowed.]

(2) [The eligibility agency determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The eligibility agency multiplies the weekly amount by 4.3 to obtain a monthly amount and multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) [The eligibility agency determines an individual's eligibility prospectively [for the upcoming certification period] at [the time of] application and at each [recertification] review for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that the agency expects the household to receive or to become available to the household during the upcoming [certification] review period.

(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review period to determine an average monthly income. [The eligibility agency prorates income that is received less often than monthly over the certification period to determine an average monthly income. The eligibility agency may request earlier years' tax returns as well as current income information to determine a household's income.]

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the agency expects the household to receive each month of the [certification] review period, or an annual amount that is prorated over the [certification] review period. The eligibility agency may use different methods for different types of income that the same household receives.

(5) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent time period during which the individual had farm or self-employment income. [The eligibility agency deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the eligibility agency may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%.] The eligibility agency shall deduct[s] the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

(6) The eligibility agency may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-12)9. Assets.

[There is no] An asset test is not required for PCN eligibility [in PCN].

R414-310-10)3. Application and Signature Procedure.

(1) [The Department adopts 42 CFR 435.907 and 435.908, 2010 ed., which are incorporated by reference.

(2) To enroll in PCN, the applicant must complete and sign a written application or complete an online application during an open enrollment period. [The provisions of Section R414-308-3 apply to PCN applicants, except for paragraph (9), (10) and the three months of retroactive coverage.

(a) The eligibility agency shall review an application to determine eligibility for the PCN program if the application is pending approval when the open enrollment period begins.

(b) An applicant must follow the provisions of Section R414-310-14 to reapply for each recertification.

(2) A Medicaid or CHIP recipient may make a request during the open enrollment period for the agency to determine the individual's eligibility for PCN without completing a new application.

(3) The eligibility agency shall reinstate a medical case without requiring a new application if the agency closes the case in error.

(4) An applicant may withdraw an application for PCN any time before the eligibility agency completes an eligibility decision on the application.

(5) An applicant or enrollee must pay an annual enrollment fee for each 12-month recertification period to enroll in PCN. Upon the eligibility agency determining that the individual meets the eligibility criteria for enrollment, the individual must pay the enrollment fee when he applies and recertifies for PCN.

(a) An applicant must pay the enrollment fee within 30 days of the date on the notice that approves enrollment.

(b) To reenroll after the individual recertifies, the individual must pay the enrollment fee within 30 days of the date on the notice that approves enrollment, or by the end of the month that follows the review month, whichever is longer.

(c) The eligibility agency does not require an American Indian or Alaska Native to pay an enrollment fee. This enrollment fee waiver applies to both the individual and the spouse if both are enrolled and at least one of them is an American Indian or Alaska Native. If only one spouse is enrolled in PCN and is not an American Indian or Alaska Native, that spouse must pay the enrollment fee to enroll in PCN.

(d) Coverage may only become effective when the eligibility agency receives the enrollment fee. The provisions of Section R414-310-15 determine the effective date of enrollment. The eligibility agency shall deny enrollment if the individual does not pay the enrollment fee timely.

(e) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in PCN.

(f) The applicant or enrollee must pay the enrollment fee to DWS in cash, by debit or credit card, or by check or money order made out to DWS.

~~(g) The enrollment fee for an individual or married couple receiving General Assistance from DWS is \$15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less than 50% of the federal poverty guideline applicable to their household size is \$25. The enrollment fee for any other individual or married couple is \$50.~~

~~(h) DWS may refund the enrollment fee if it decides that the person is ineligible for the program; however, DWS may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that DWS pays in error on behalf of the individual.~~

~~(6) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. The eligibility agency may not require a new application form; however, the household must provide requested information to determine eligibility for the spouse. The household must provide information about access to creditable health insurance that includes Medicare Part A or B, student health insurance, and the VA Health Care System.~~

~~(a) The effective date of enrollment to add a spouse to an open PCN case is defined in Section R414-310-15. Coverage continues through the end of the certification period.~~

~~(b) The eligibility agency may not require a new enrollment fee to add a spouse during the certification period.~~

~~(c) The eligibility agency may not require a new income test to add a spouse for the months remaining in the certification period.~~

~~(d) An eligible household may only add a spouse if DWS does not stop enrollment under Subsection R414-310-16(2).~~

~~(e) The eligibility agency shall count income of the spouse and require payment of the enrollment fee at the next scheduled recertification.~~

]

R414-310-11[4]. Eligibility Decisions and [Recertification]Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013[2010] ed., regarding eligibility determinations[which are incorporated by reference].

(2) [When an individual applies for PCN,]At application and review, the eligibility agency shall determine whether the individual is eligible for Medicaid or CHIP.

(a) An individual who qualifies for Medicaid without paying a spenddown~~], a poverty level pregnant woman asset eopayment]~~ or an MWI premium cannot enroll in PCN.~~[An applicant who turns 19 years of age during the application month and qualifies for Medicaid or CHIP during that month may enroll in PCN the following month in accordance with Section R414-310-15.]~~

(b) An applicant who is eligible for Medicaid or CHIP during the application month, or a Medicaid or CHIP recipient who requests PCN enrollment during an open enrollment period, may enroll in PCN in accordance with Subsection R414-310-12(1).

~~(b) If the individual appears to qualify for Medicaid, or CHIP, but additional information is required to make that determination, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual fails to provide the requested information.~~

~~(3) An individual open on Medicaid or UPP may request to enroll in PCN.~~

~~(a) A new application form is not required.~~

(b) The rules in Section R414-310-12 govern the effective date of enrollment.

(c) If the individual is moving from UPP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.

(d) If the individual is moving from Medicaid, the eligibility agency shall waive the open enrollment period if the individual was previously on PCN, became eligible for Medicaid, and requests to reenroll in PCN without a break in coverage.

(e) If the individual is moving from Medicaid and was not previously on PCN, or there has been a break in coverage of one or more months, the individual must reapply during an open enrollment period.

(f) All other eligibility requirements must be met.

~~[(3) If the individual qualifies for Medicaid and PCN, but must pay a spenddown, poverty level, pregnant woman asset eopayment or MWI premium to qualify for Medicaid, the individual may choose to enroll in the PCN program. If the PCN program is not in an enrollment period, the applicant may choose to enroll in Medicaid and wait for an open enrollment period to reapply for PCN.~~

~~(a) PCN does not cover prenatal or delivery services for a pregnant woman.~~

~~(b) PCN does not provide long-term care services in a medical institution or under a home and community-based waiver.~~

~~(4) To enroll, the individual must meet the eligibility criteria for enrollment in PCN, pay the enrollment fee, and enroll during an open enrollment period under Section R414-310-16.~~

~~[(5)4] The eligibility agency shall complete an eligibility determination [of eligibility or ineligibility]for each application unless:~~

~~(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;~~

~~(b) the applicant dies;~~

~~(c) the applicant cannot be located; or~~

~~(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if the verification date is later.~~

~~[(6)5] The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916.~~

~~(a) The agency may request a recipient to contact the agency to complete the eligibility review.~~

~~(b) The agency shall provide the recipient a written request for verification needed to complete the review.~~

~~(c) The agency shall provide proper notice of an adverse decision.~~

~~(d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.~~

~~(6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency shall end eligibility effective the end of the month for which the agency sends proper notice to the recipient.~~

~~(a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.~~

~~(b) The application processing period applies to this request to reapply.~~

~~(c) Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.~~

~~(d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible.~~

~~(e) The eligibility agency may not continue eligibility while it makes a new eligibility determination.~~

~~(f) The eligibility agency shall waive the open enrollment requirement during these three calendar months.~~

~~(g) If the enrollee does not respond to the request to complete the review for PCN during the three calendar months immediately following the review closure date, the enrollee must reapply for PCN and meet all eligibility criteria.~~

~~(7) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date when the closure is for a reason other than incomplete review, the eligibility agency shall waive the open enrollment period and process the request as a new application.~~

~~(8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.~~

~~(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs. [Upon determining that the applicant is eligible for PCN and upon receiving payment of the enrollment fee, the eligibility agency shall enroll the individual in PCN for a 12-month certification period. The eligibility agency shall end enrollment after the 12-month certification period.~~

~~(7) The eligibility agency shall provide an enrollee the opportunity to reenroll for a new 12-month certification period when the certification period is near completion.~~

~~(a) The recertification is a reapplication to determine whether the enrollee is eligible to enroll in a new 12-month certification period.~~

~~(b) The eligibility agency shall notify the enrollee that PCN benefits end after the 12-month certification period.~~

~~(c) The eligibility agency shall inform the enrollee of the necessary steps to complete the recertification.~~

~~(8) At each recertification, the eligibility agency shall determine whether the enrollee is eligible for Medicaid. The individual may not reenroll in PCN if the individual qualifies for Medicaid without a cost. If the individual appears to qualify for Medicaid, the individual must provide additional information requested by the agency. The eligibility agency shall deny recertification if the individual fails to provide the requested information.~~

~~(9) The eligibility agency may request verification from the enrollee if the enrollee responds to the recertification request during the recertification month.~~

~~(a) The eligibility agency shall send a written request for the necessary verification.~~

~~(b) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification.~~

~~(e) The eligibility agency shall determine eligibility if the enrollee provides all verification by the verification due date or by the end of the application processing period. The agency shall either approve a new 12-month certification period pending payment of the enrollment fee or deny eligibility for a new certification period. The eligibility agency shall notify the enrollee of its decision.~~

~~(10) If the enrollee fails to respond to the request for recertification during the recertification month or does not provide all verification within the application processing period after responding timely to the recertification request, the enrollee may reapply in the calendar month that follows the effective closure date, without waiting for an open enrollment period.~~

~~(a) The enrollee must reapply by responding to the recertification request and providing all requested verification; or by filing a new application before the end of the month that follows the recertification month.~~

~~(b) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification, provides all requested verification, or reapplies during such month.~~

~~(c) The benefits become effective upon the enrollee paying the required enrollment fee if the eligibility agency approves an enrollee for a new 12-month certification period.~~

~~(d) The eligibility agency shall notify the enrollee if the agency does not approve an enrollee for the new certification period.~~

~~(11) The enrollee must wait for the next open enrollment period to reapply for PCN if the enrollee fails to complete the recertification process as defined in Subsection R414-310-14(9) or (10).]~~

R414-310-12[5]. Effective Date of Enrollment[,—Change Reporting] and Enrollment Period.

~~(1) Subject to the limitations in Sections R414-306-[6]4 and R414-310-[7]6, the effective date of PCN enrollment is the first day of the application month [in which the eligibility agency receives an application] with the following exceptions:~~

~~(a) An applicant may be eligible for PCN if the applicant applies during an open enrollment period and will turn 19 before the end of the month in which open enrollment ends.~~

~~(i) Enrollment in PCN may not begin before an individual turns 19 years of age.~~

~~(ii) If an applicant qualifies for Medicaid or CHIP in the application month, enrollment in PCN begins the month after eligibility for Medicaid or CHIP ends.~~

~~(b) If the individual is moving from UPP, the effective date of enrollment is the first day after the health insurance coverage ends.~~

~~(c) If the individual is moving from Medicaid, or is eligible for Medicaid in the application month or the month following the application month, the effective date of enrollment is the first day of the month after Medicaid coverage ends. To enroll in PCN, Medicaid eligibility must end by the end of the month following the application month.~~

~~[—(a) An applicant who turns 19 years of age during the application month and before the end of the open enrollment period in the application month is enrolled in PCN as follows:~~

~~(i) The eligibility agency shall enroll the applicant in Medicaid if the applicant qualifies for Medicaid during the application month without cost. In this instance, enrollment in PCN becomes effective for the month that follows the application month if the~~

applicant neither qualifies for Medicaid nor qualifies without cost and chooses not to pay for Medicaid during that following month;

(ii) The eligibility agency shall enroll the applicant in CHIP if the applicant qualifies for enrollment in CHIP during the application month. Enrollment in PCN then becomes effective for the following month;

(iii) If the applicant is not eligible for Medicaid without cost and is not eligible for CHIP in the application month, enrollment in PCN becomes effective in the application month, but no earlier than when the applicant turns 19 years of age;

(iv) The applicant is not eligible for PCN if the applicant turns 19 years of age after the open enrollment period.

(b) An otherwise eligible applicant who turns 65 years of age during the application month and applies before age 65 may enroll in PCN, which coverage becomes effective as defined in Subsection R414-310-15(1). The applicant is not eligible for PCN if the applicant is eligible for Medicaid without cost in the application month. The eligibility agency shall end enrollment effective the end of the month in which the applicant turns 65 years of age.

(c) The eligibility agency shall deny enrollment to an individual if the individual applies for PCN on or after the date the individual turns 65 years of age.

(d) Subject to the limitations in Section R414-310-15 and the open enrollment requirement, the effective date of enrollment for the spouse of an enrollee is the first day of the month in which the enrollee requests to add the spouse.

(2) The eligibility agency shall enroll an applicant who meets all eligibility criteria and pays the enrollment fee for a 12-month certification period that begins with the first month of enrollment. The applicant must pay the enrollment fee before any benefits for a 12-month certification period become effective. The Department may not provide any benefits or pay for any services that an applicant receives before the effective date of enrollment.

(3) The effective date of reenrollment for PCN [re-certification] after the eligibility agency completes the periodic review is the first day after either the review month or due process month. Subsection R414-310-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for incomplete review. If the recertification is completed as described in either Subsection R414-310-14(9) or (10). The enrollee must continue to meet all eligibility criteria and pay the enrollment fee timely before benefits become effective for the new 12-month certification period.]

(4) The eligibility agency shall end eligibility [before the end of a 12-month certification period] for any of the following reasons:

(a) the individual turns 65 years of age;

(b) the individual enrolls in a health coverage plan as defined in Subsection 414-310-6(2) [becomes a full-time student who is entitled to receive student health insurance, becomes entitled to or eligible to enroll in Medicare, or becomes covered by Veterans Administration Health Insurance];

(c) the individual gains access to an employer-sponsored health plan that meets the requirements of Subsection R414-310-6(2);

(d) a change in income or household composition results in the individual exceeding the income limit;

(e) the individual dies;

(f) the individual moves out of state or cannot be located;

or

(g) the individual enters a public institution or an Institution for Mental Disease.

(5) The eligibility agency shall end PCN enrollment when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan. The eligibility agency shall continue PCN eligibility through the end of the certification period if the individual gains access to an employer-sponsored health plan but does not enroll in the plan.

(6) An enrollee who gains access to or enrolls in an employer-sponsored health plan may [choose to enroll in the employer-sponsored health plan and] switch to the UPP program if the enrollee meets UPP eligibility requirements.

(a) The individual must notify the eligibility agency within ten calendar days of enrolling in the plan or within ten days after coverage begins, whichever is longer, to switch to UPP.

(b) The requirements defined in Subsection R414-310-7(3) (b) or (c) must be met except that the individual does not have to enroll in UPP during an open enrollment period.

(c) The eligibility agency continues the current certification period without doing a new income determination when a PCN enrollee switches to UPP.

(7) The eligibility agency shall determine if an enrollee who gains access to an employer-sponsored health plan during the certification period but does not enroll in such plan may reenroll in PCN at the next recertification as follows:

(a) The individual is not eligible to reenroll in PCN for a new 12-month certification period if the enrollee has access to an employer-sponsored health plan that costs less than 15% of the enrollee's countable gross income at the next recertification;

(b) The enrollee may choose to switch to UPP if the enrollee can enroll in the employer-sponsored health plan upon recertifying, and the plan meets the requirements of Subsection R414-310-7(3)(b) or (c) and costs 5% or more of the enrollee's countable gross income. The enrollee does not have to wait for an UPP open enrollment period and must enroll in the employer-sponsored health plan to switch to UPP.

(c) The enrollee may reenroll in PCN if the cost exceeds 15% of the enrollee's countable gross income.

(8) An individual who enrolls in the Utah Health Insurance Pool does not lose PCN eligibility.

(9) An enrollee who fails to report changes or return verifications timely must repay any overpayment of benefits for which the individual is not eligible to receive.

(10) The individual may file a new application or make a request to the eligibility agency to reenroll if a PCN case closes for any reason:

(a) The individual must file a new application or make a request to reenroll within the calendar month that follows the effective closure date;

(b) The eligibility agency shall process the request as a new application. The agency shall waive the open enrollment period and determine whether the individual is still eligible for PCN;

(c) The eligibility agency shall continue eligibility through the end of the current certification period if the agency determines that the individual is eligible for PCN;

(d) The eligibility agency shall approve the individual for a new certification period if the certification period has ended when the agency determines that the individual continues to be eligible. The

individual must pay the enrollment fee timely for the new 12-month certification period;

(c) The eligibility agency shall deny the request to reenroll and send a notice to the individual if the agency determines that the individual is not eligible for PCN.

(11) The eligibility agency shall determine eligibility for PCN if a Medicaid-eligible recipient reports a change during a PCN enrollment month that makes the recipient ineligible for Medicaid or causes a spenddown. The effective date of enrollment for PCN is the day after the Medicaid case closes if the agency determines that the recipient is eligible for PCN and the recipient pays the enrollment fee timely.

(12) If a PCN case closes for any reason, other than to become covered by another Medicaid or UPP program, and remains closed for one or more calendar months, the individual must submit a new application to the eligibility agency during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.

(13) If a PCN case closes because the enrollee is eligible for another Medicaid program or UPP, the individual may request to reenroll in PCN if there is no break in coverage between the programs, even if the eligibility agency ends open enrollment under Subsection R414-310-16(2).

(a) If the individual's 12-month PCN certification period, or 12-month UPP certification period, has not ended, the individual may reenroll for the rest of that certification period. The individual is not required to complete a new application or have a new income-eligibility determination. The individual must continue to meet the criteria defined in Section R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the certification period.

(b) If the 12-month certification period from the earlier enrollment has ended and the individual is moving from Medicaid to PCN, the individual may still reenroll in PCN. The individual must meet eligibility and income guidelines, and pay a new enrollment fee for the new 12-month certification period.

(14) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification, the eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice. The eligibility agency shall treat the receipt of verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date.

(a) The eligibility agency shall waive the open enrollment period and continue eligibility for the rest of the certification period if the agency determines that the enrollee is eligible for PCN.

(b) The eligibility agency shall send a denial notice to the enrollee if the agency determines that the enrollee is not eligible for PCN.

(15) A change in income during the certification period does not make the enrollee ineligible for PCN for the months remaining in the current certification period; however, the individual may request the eligibility agency make a Medicaid determination of eligibility.

(a) The eligibility agency shall change coverage to Medicaid and end PCN enrollment if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid without cost.

(b) The enrollee may choose to remain on PCN through the end of the certification period if the enrollee requests a Medicaid

determination of eligibility and the reported change makes the enrollee eligible for Medicaid with a spenddown or MWI premium.

R414-310-13[6]. Change Reporting and Benefit Changes[Enrollment Limitation].

(1) Enrollees are required to report changes defined in Subsection R414-310-3(2) to the eligibility agency.

(a) The eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility.

(b) The eligibility agency shall send proper notice of changes in eligibility.

(2) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(3) If an enrollee requests enrollment for a spouse, the application date for the spouse is the date of the request.

(a) A new application form is not required.

(b) The eligibility of the spouse is determined according to Section R414-310-11.

(c) The eligibility agency shall determine the effective date of enrollment for the individual in accordance with Section R414-310-12.

(d) All other eligibility requirements must be met.

(4) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification by the due date, the eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice.

(1) The eligibility agency shall limit enrollment in PCN.

(2) The eligibility agency may stop enrollment of new individuals at any time based on availability of funds.

(3) The eligibility agency may not accept applications or maintain waiting lists during a period that enrollment of new individuals is stopped.

(4) If enrollment is not stopped, an individual may apply for PCN.

(5) An individual who becomes ineligible for Medicaid or CHIP, or who must pay a spenddown, poverty level, pregnant woman asset copayment or MWI premium for Medicaid, but who was not previously enrolled in PCN, may apply to enroll in PCN if the eligibility agency does not stop enrollment under Subsection R414-310-16(2). If the agency stops enrollment, the individual must wait for an open enrollment period to apply.

R414-310-14[7]. Notice and Termination.

(1) The Department adopts and incorporates by reference 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, October 1, 2013[0] ed., which are incorporated by reference.]

(2) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the [re-certification]review.

(3) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

The eligibility agency shall end enrollment after the 12-month certification period. An enrollee may reenroll for a new 12-month certification period without waiting for an open enrollment period by completing the re-certification process, or by reapplying before the last day of the month that follows the effective closure date.

R414-310-15[8]. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that the individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under PCN for which the individual is not eligible must repay the Department for the cost of the benefits that the individual receives.

(3) An alien and the alien's sponsor are jointly liable for benefits that an individual receives for which the individual is not eligible.

(4) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee, or for the benefit of the enrollee during a period in which the enrollee is not eligible to receive the benefits.

**KEY: Medicaid, primary care, [covered-at-work]-demonstration
Date of Enactment or Last Substantive Amendment: [~~October 1, 2012~~2014]**

Notice of Continuation: June 4, 2012

Authorizing, and Implemented or Interpreted Law: 26-18-1; 26-1-5; 26-18-3

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-320
Medicaid Health Insurance Flexibility
and Accountability Demonstration
Waiver

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38322

FILED: 02/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to renew Utah's Premium Partnership for Health Insurance (UPP) program under the 1115 Waiver authority as recently approved by the Centers for Medicare and Medicaid Services (CMS), and to align UPP with the provisions of the Patient Protection and Affordable Care Act (ACA) relative to determining income, income and budgeting, the filing unit, and the processing of applications and reviews for Modified Adjusted Gross Income (MAGI)-based coverage groups.

SUMMARY OF THE RULE OR CHANGE: This amendment defines general provisions for determining countable income, best estimates of income, and the UPP filing unit that uses methodologies for MAGI-based groups. It also defines provisions for accepting and processing applications, making eligibility determinations, and for processing UPP reviews to match those used for other MAGI-based groups. It also updates incorporations by reference and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 CFR 433.138(b), published by Government Printing Office, 10/01/2013
- ◆ Adds 42 CFR 435.603(c), (d), (e), (g) and (h), published by Government Printing Office, 10/01/2013
- ◆ Updates 42 CFR 435.911 and 435.912, published by Government Printing Office, 10/01/2013
- ◆ Removes 20 CFR 416, Subpart K, Appendix, published by Government Printing Office, 04/01/2010
- ◆ Removes 42 CFR 435.907 and 435.908, published by Government Printing Office, 10/01/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state will not incur any new costs because funding was previously approved by the legislature for this ongoing program.
- ◆ **LOCAL GOVERNMENTS:** This change does not create new costs for local governments because they neither determine eligibility for the UPP program nor fund UPP services.
- ◆ **SMALL BUSINESSES:** Small businesses will not incur new costs because this change does not impose new requirements or charges on business in general.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers and Medicaid recipients will not incur new costs because funding was previously approved by the legislature for this ongoing program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single Medicaid provider or a Medicaid recipient will not incur new costs because funding was previously approved by the legislature for this ongoing program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is likely little impact on business but exact changes in enrollment cannot be determined at this time.

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

HEALTH
HEALTH CARE FINANCING,

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

R414-320-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Section 1115(a) of the Social Security Act.

(2) This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The definitions in Section 26-40-102 and Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Adult" means an individual who is 19 ~~through 64~~ years of age or older.

(2) "Avenue H" means Utah's Health Marketplace where Utah employers and their employees can find information about available employer-sponsored health insurance plans, select a plan, and enroll online.

(3) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

~~(4) "Consolidated Omnibus Budget Reconciliation Act" or (COBRA) continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. To receive reimbursement under Utah's Premium Partnership for Health Insurance (UPP) program, the COBRA health plan must be an UPP-qualified health plan.~~

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

~~(6) "Department" means the Department of Health.~~

~~(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee. The due process month is not counted as part of the certification period.~~

~~(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for the UPP program under contract with the Department.~~

(9) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through the Utah Health Exchange.

(10) "Enrollee" means an individual who applies for and is found eligible for the UPP program, and is receiving UPP benefits.

~~(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.~~

~~(12) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.~~

~~(13) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.~~

(14) "Open enrollment" means a period during which the eligibility agency accepts applications for the UPP program.

(15) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(16) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(17) "Review month" means the last month of the certification period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

(18) "UPP Qualified Health Plan" means a health plan that meets all of the following requirements:

(a) Health plan coverage includes:

- (i) physician visits;
- (ii) hospital inpatient services;
- (iii) pharmacy services;
- (iv) well child visits; and
- (v) children's immunizations.

(b) Lifetime maximum benefits must be at least \$1,000,000.

(c) The deductible may not exceed \$2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The employer contributes at least 50% of the cost of the employee's health insurance premium when the plan is offered directly through the employer. If the employer offers plans through the Utah Health Exchange, the employer must contribute at least 50% of the cost of the employee's health insurance premium for either the employer's default plan or the plan the employee selects. If the plan is a Consolidated Omnibus Budget Reconciliation Act (COBRA) ~~continuation~~ plan, the employer does not have to contribute to the premium.

(f) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

~~[(19) "Utah Health Exchange" or (UHE) means an internet portal where Utah employers and their employees can find information about available employer-sponsored health insurance plans, select a plan, and enroll online.~~

[(20)13] "Utah's Premium Partnership for Health Insurance" or (UPP) means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan, including employer-sponsored health plans available under Avenue H[UHE], or COBRA [~~e~~ontinuation-] coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-~~[3]4~~ apply to applicants and enrollees of the UPP program except that reportable changes for UPP applicants and enrollees are defined in Subsection R414-320-3(~~[3]2~~).

~~(2) [Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:~~

- ~~(a) adults with children living in the home;~~
- ~~(b) adults without children living in the home;~~
- ~~(c) adults enrolled in the PCN program;~~
- ~~(d) adults who were enrolled in the Medicaid program within the last thirty days before the beginning of the open enrollment period; or~~
- ~~(e) other groups designated in advance by the eligibility agency consistent with efficient administration of the program.~~

~~(3)]An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of learning of the change. The eligibility agency shall notify the applicant at the time of application of the changes that the individual must report. [Examples of r]Reportable changes include:~~

- ~~(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA [~~e~~ontinuation-]coverage;~~
- ~~(b) An enrollee changes health insurance plans;~~
- ~~(c) The amount of the premium that the enrollee pays for an employer-sponsored health insurance plan or COBRA [~~e~~ontinuation-] coverage changes;~~
- ~~(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System;~~
- ~~(e) An enrollee leaves the household or dies;~~
- ~~(f) An enrollee or the household moves out of state;~~
- ~~(g) Change of address of an enrollee or the household; or~~
- ~~(h) An enrollee enters a public institution or an institution for mental diseases.~~

~~[(4)3] An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-~~[5]6~~ and R414-301-~~[6]7~~.~~

~~[(5)4] An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA [~~e~~ontinuation] coverage to be eligible for benefits.~~

~~[(6)5] An eligible child may choose to enroll in his parent's or guardian's employer-sponsored health insurance plan or COBRA [~~e~~ontinuation-]coverage and receive UPP benefits, or may choose direct coverage through CHIP. A child under the age of 19 may enroll in an employer-sponsored health insurance plan offered by the child's~~

employer or COBRA [~~e~~ontinuation-]coverage and UPP, or may choose direct coverage through CHIP.

R414-320-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-~~[4]3~~, R414-302-~~[2]4~~, R414-302-~~[5]7~~, and R414-302-~~[6]8~~ concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to adult applicants and enrollees of UPP.

(2) The provisions of Sections R382-10-6, R382-10-7, and R382-10-9 concerning U.S. citizenship, alien status, state residency and social security numbers apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Sections R414-302-~~[4]3~~ or R382-10-6 is not eligible for any services or benefits under the UPP program.

~~(4) Health plans must meet the criteria of being an UPP qualified health plan.~~

~~(5) An individual must apply for the UPP program before he turns 65 years of age. Enrollment shall end effective the end of the month in which an individual turns 65 years of age.~~

~~(6) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency may limit the number of individuals it enrolls.~~

~~(a) The eligibility agency may stop enrollment of new individuals at any time.~~

~~(b) The open enrollment period may be limited to:~~

- ~~(i) adults with children living in the home;~~
- ~~(ii) adults without children living in the home; or~~
- ~~(iii) other groups designated in advance by the eligibility agency consistent with efficient administration of the program.~~

~~(c) The eligibility agency may not accept applications or maintain waiting lists during a period that it stops enrollment of new individuals.~~

~~(d) A child is not subject to the open enrollment requirement to enroll in UPP.~~

~~(7) Residents of public institutions are not eligible for UPP.~~

~~(a) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.~~

~~(b) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.~~

~~[(4)8] The eligibility agency may not require an applicant or enrollee for the UPP program to provide Duty of Support information. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the UPP program. [An adult who is eligible for Medicaid, but fails to cooperate with Duty of Support requirements required by the Medicaid program, may not enroll in the UPP program.]~~

~~[(5) An individual who must pay a spenddown, poverty-level, pregnant woman asset copayment, or MWI premium to receive Medicaid may enroll in UPP if:~~

- ~~(a) the individual meets UPP program eligibility criteria;~~
- ~~(b) the individual elects not to receive Medicaid in the month that the individual wishes to enroll in UPP; and~~

~~(c) the eligibility agency continues open enrollment under the provisions of Section R414-320-16. If the agency stops enrollment, the individual must wait for an open enrollment period to enroll in UPP.~~

[R414-320-5. Verification and Information Exchange.

(1) An applicant and enrollee must provide verification of eligibility factors as requested by the eligibility agency and in accordance with the provisions of Section R414-308-4.

(2) ~~The Department shall enter into agreements with other government agencies as outlined in Section R414-301-3, and the eligibility agency may release information concerning an applicant or enrollee and his household to other state and federal agencies to determine eligibility for other public assistance programs.~~

(3) The eligibility agency shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-4~~5~~.

[R414-320-6. Residents of Institutions.

~~(1) Residents of public institutions are not eligible for the UPP program.~~

~~(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.~~

~~(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.~~

[R414-320-7]6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), [2010]October 1, 2013 ed., ~~which is incorporated by reference.~~

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, [2010]July 1, 2013 ed., is not eligible for enrollment.

(3) An applicant who is covered by COBRA [~~continuation~~] coverage may be eligible for UPP enrollment.

(4) The following requirements apply to an individual who has access to but has not yet enrolled in employer-sponsored health insurance~~[The eligibility agency determines UPP eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage who meets the requirements of Subsection R414-320-2(14) as follows]:~~

(a) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H[UHE], is less than 5% of the ~~[household's countable gross]~~countable MAGI-based income for the individual's household, the individual is not eligible for the UPP program.

(b) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H[UHE], equals or exceeds 5% of the ~~[household's countable gross]~~countable MAGI-based income for the individual's household, the individual may enroll in UPP.

(i) An eligible child may choose enrollment in either UPP or CHIP.

(ii) If the cost of coverage exceeds 15% for an adult, the individual may enroll in either UPP or PCN. To enroll in PCN, it must be an open enrollment period and the individual must meet the PCN criteria.

(c) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(d) The eligibility agency will include in the cost of coverage for the spouse or dependent child, the cost to enroll the employee if the employee must be enrolled to enroll the spouse or

dependent child. ~~[For adults, if the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through UHE, exceeds 15% of the household's countable gross income, the adult may choose to enroll in UPP or may choose direct coverage through PCN if PCN enrollment continues under the provisions of Section R414-310-16.~~

~~(d) If the cost to enroll a child in the employer-sponsored coverage offered by the employer directly, or the employer's default plan offered through UHE, is greater than or equal to 5% of the household's countable gross income, a child may choose enrollment in the employer-sponsored health plan and UPP or direct coverage through CHHP.~~

~~(e) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible that must be met before it will pay any claims. For a spouse or dependent child, if the employee must be enrolled to enroll the spouse or dependent child, the cost of coverage includes the cost to enroll the employee and the spouse or dependent child.~~

(5) An eligible individual who has access to or who is enrolled in a COBRA plan may choose to enroll in UPP and the COBRA plan if the individual's cost for the COBRA plan exceeds 5% of the ~~[household's gross]~~countable MAGI-based income for the individual's household ~~and the plan meets the criteria to be an UPP-qualified health plan as defined in R414-320-2(16)].~~

(6) An individual [~~who is covered under Medicare Part A or Part B, or~~] who could enroll in Medicare [~~Part B coverage,~~] is not eligible for UPP enrollment, even if the individual must wait for a Medicare open enrollment period to apply ~~[for Medicare benefits].~~

(7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for UPP enrollment.

(a) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must [initiate the process]apply for and take all necessary steps to enroll in the VA Health Care System.

(b) Eligibility for the UPP program ends once the individual's coverage in the VA Health Care System begins.

(8) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in UPP for 90 days ~~[after the earlier insurance ends.]from the date the coverage ends.~~

(a) The eligibility agency may not apply a 90-day waiting period in the following situations:

(i) The premium paid by the individual or family for coverage of the individual or family member exceeded 5% of the MAGI-based household income.

(ii) The cost of the premium paid and deductible that includes the individual for the family coverage health plan exceeds 9.5% of the MAGI-based household income.

(iii) An employer stopped offering coverage under an ESL.

(iv) Loss of coverage due to a change in employment or involuntary separation.

(v) The individual has special health care needs as defined by the Department.

(vi) Loss of coverage due to the death or divorce of an UPP individual.

(vii) Voluntary termination of COBRA.

~~(viii) Voluntary termination of Utah Comprehensive Health Insurance Pool coverage.~~

~~(ix) Voluntary termination of coverage for an adult child from the parent's or guardian's ESI plan.~~

~~(x) Voluntary termination of coverage by a spouse who does not live in the same household as the UPP applicant.~~

~~(xi) Voluntary termination of coverage for a child from a non-custodial parent's ESI plan.~~

~~(xii) The individual is voluntarily terminated from insurance that does not provide coverage in Utah;~~

~~(xiii) The individual is voluntarily terminated from a limited health insurance plan;~~

~~(xiv) A child is terminated from a parent's insurance because ORS reverses the forced enrollment requirement due to the insurance being unaffordable.~~

~~[(a) For an individual to enroll in UPP, the 90-day ineligibility period must expire by the earlier of:~~

~~(i) the end of the open enrollment period during which the individual applies for UPP; or~~

~~(ii) the end of the month which follows the month that the individual applies for UPP if the open enrollment period continues.~~

~~(b) If the 90-day ineligibility period does not end by the earlier of those two dates, the eligibility agency shall deny the application.~~

~~(c) An effective date of enrollment can only occur after the 90-day ineligibility period.~~

~~[(9)b] The eligibility agency will determine the individual's eligibility at the end of the waiting period without requiring a new application.~~

~~(i) The agency may request information about changes in the individual's circumstances that may affect eligibility.~~

~~(ii) If eligible, enrollment in UPP can begin in the month in which the 90-day ineligibility period ends. [An applicant, applicant's spouse, or dependent child may be eligible for enrollment in UPP without a 90-day ineligibility period if that person discontinues coverage under a COBRA plan, the Utah Comprehensive Health Insurance Pool, or involuntarily discontinues coverage under an employer-sponsored health plan.]~~

~~[(9)a] An individual is eligible to enroll in UPP if the individual's prior health insurance coverage expires before the end of the calendar month that follows the month in which he applies for UPP, and the individual has access to another employer-sponsored health insurance plan that meets the criteria of an UPP qualified health plan.~~

~~(b)] The UPP enrollment date must be after the prior health insurance coverage ends.~~

~~[(10) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if his earlier insurance ended more than 90 days before the application date.~~

~~[(14)10] An eligible individual with access to an employer-sponsored health plan who also has creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program [to receive reimbursement for his employer-sponsored health plan].~~

~~[(12) The individual must enroll in an UPP qualified health plan either with an employer-sponsored health plan or a COBRA continuation health plan within 30 days of the date of the approval notice to enroll in UPP.~~

~~(13) Individuals must report at application and review whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's or parent's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.~~

~~(14) The eligibility agency shall deny an application or review if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify.~~

~~]~~
~~**R414-320-8]7. Household Composition and Income Provisions.**~~

~~(1) The Department determines household composition and countable household income according to the provisions in R414-304-5. [The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the UPP program:~~

~~(a) The individual;~~

~~(b) The individual's spouse living with the individual;~~

~~(c) All children of the individual or the individual's spouse who are under age 19 and living with the individual; and~~

~~(d) An unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.]~~

~~(2) For an individual to be eligible to enroll, countable MAGI-based income for the individual's household must be equal to or less than 200% of the federal poverty guideline for the applicable household size. [The eligibility agency shall determine household composition for an eligible child in accordance with Subsection R382-10-11(1).~~

~~(3) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.~~

~~(4) Any household member who is defined in Subsection R414-320-8(1) or Subsection R414-320-8(2) who is not a U.S. citizen or national, or who is not a qualified resident alien is included in the household size. The eligibility agency shall count that individual's income the same way that it counts the income of a U.S. citizen, national, or a qualified resident alien.~~

~~**R414-320-9. Age Requirement.**~~

~~(1) An individual must be under age 65 to be eligible for UPP and must enroll in the UPP program before he turns 65 years of age.~~

~~(2) The eligibility agency shall deny eligibility if it does not receive an application before an individual turns 65 years of age.~~

~~**R414-320-10. Income Provisions.**~~

~~(1) For an individual to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.~~

~~(2) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. The eligibility agency shall use the countable gross income of parents who live with a child to determine the child's eligibility. The agency may not count any income that it excludes under Section R414-320-10.~~

~~(3) Any income in a trust that a household member receives becomes the income of the individual for whom it is received. The income is countable if the eligibility agency counts that individual's income to determine eligibility.~~

~~(4) The eligibility agency shall count as income payments that a household member receives from the Family Employment program, Working Toward Employment program, or from refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3, Employment Support Act.~~

~~(5) The eligibility agency shall count rental income. The eligibility agency may deduct the following expenses:~~

~~(a) Taxes and attorney fees needed to make the income available;~~

~~(b) Upkeep and repair costs necessary to maintain the current value of the property;~~

~~(c) Utility costs only if they are paid by the owner; and~~

~~(d) Interest only on a loan or mortgage secured by the rental property.~~

~~(6) The eligibility agency shall count as income cash contributions from non-household members unless the parties sign a written agreement to repay the funds.~~

~~(7) The eligibility agency shall count as income the interest earned from payments under a sales contract or a loan agreement to the extent that the individual continues to receive these payments during the certification period.~~

~~(8) The eligibility agency shall count as income needs-based veteran's pensions. Nevertheless, the agency counts only the portion of a Veteran's Administration check to which the individual is legally entitled. Any portion of the payment for another family member counts solely as that family member's income.~~

~~(9) The eligibility agency shall count solely as the child's income the child support payments that a parent receives for a dependent child when that child lives in the home.~~

~~(10) The eligibility agency may only count in-kind income when a non-household member provides goods or services to an individual in exchange for services that the individual performs.~~

~~(11) The eligibility agency shall count as income supplemental security income and state supplemental payments.~~

~~(12) The eligibility agency may not count income that is excluded under 20 CFR 416 Subpart K, Appendix, 2010 edition, which is incorporated by reference.~~

~~(13) The eligibility agency may not count as income payments that are prohibited under other federal laws from being counted to determine eligibility for federally-funded medical assistance programs.~~

~~(14) The eligibility agency may not count as income death benefits to the extent that the funds are spent on the deceased person's burial or last illness.~~

~~(15) The eligibility agency may not count as income a bona fide loan that an individual contracts in good faith and endorses in writing to repay.~~

~~(16) The eligibility agency may not count as income child care assistance under Title XX.~~

~~(17) The eligibility agency may not count as income reimbursements of Medicare premiums that an individual receives from the Social Security Administration.~~

~~(18) The eligibility agency may only count earned and unearned income of an eligible child who is under 19 years of age when the child is the head of the household. When the applicant or~~

~~enrollee's spouse is under the age of 19, the agency may only count the spouse's earned and unearned income when the spouse under the age of 19 is the head of the household. The eligibility agency shall count income of a spouse over age 19.~~

~~(19) The eligibility agency may not count as income educational income, such as educational loans, grants, scholarships, and work study programs. The individual must verify enrollment in an educational program.~~

~~(20) The eligibility agency may not count reimbursements for employee work expenses incurred by an individual.~~

~~(21) The eligibility agency may not count the value of food stamp assistance.~~

~~(22) The eligibility agency may not count income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census.]~~

R414-320-[11]8. Budgeting.

~~(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference. [Subject to the limitations in Subsection R414-320-10(19), the eligibility agency shall count the gross income of the individual and the individual's spouse, or of an eligible child's parents to determine the eligibility of the applicant or enrollee, unless the income is excluded under this rule. The eligibility agency shall deduct from the gross income only those expenses that are required to make income available to the individual.]~~

~~(2) [The eligibility agency determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The eligibility agency multiplies the weekly amount by 4.3 to obtain a monthly amount. The eligibility agency multiplies income paid biweekly by 2.15 to obtain a monthly amount.~~

~~(3)]The eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each review for continuing eligibility.~~

~~(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period.~~

~~(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review period to determine an average monthly income. [The eligibility agency prorates income that is received less often than monthly over the certification period to determine an average monthly income. The eligibility agency may request earlier years' tax returns as well as current income information to determine a household's income.]~~

~~([4]3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the household expects to receive each month of the certification period, or an annual amount that is prorated over the certification period. The eligibility agency may use different methods for different types of income that a household receives.~~

([5]4) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent period that the individual had farm or self-employment income. ~~[The eligibility agency deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the eligibility agency may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%.]~~ The eligibility agency shall deduct[s] the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

~~_____ (6) The eligibility agency may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.~~

~~_____ (7) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.~~

]

R414-320-11[2]. Assets.

~~[There is no]~~ An asset test is not required for UPP eligibility [in the UPP program].

R414-320-10[3]. Application and Signature[Procedure].

(1) ~~[The Department adopts 42 CFR 435.907 and 435.908, 2010 ed., which are incorporated by reference.~~

~~(2) The applicant must complete and sign a written application or complete an application on-line to enroll in the UPP program.] The provisions of Section R414-308-3 apply to applicants of the UPP program, except for paragraph (9), (10) and the three months of retroactive coverage.~~

~~([3]2) The eligibility agency shall reinstate an UPP case without requiring a new application if the case closes in error.~~

~~([4]3) An applicant may withdraw an application any time before the eligibility agency completes an eligibility decision on the application.~~

~~_____ (5) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.~~

~~_____ (a) The effective date of enrollment in UPP for the new household is defined in Section R414-320-15. Coverage continues through the end of the certification period.~~

~~_____ (b) The eligibility agency may not require a new income test to add the new household member for the months remaining in the certification period.~~

~~_____ (c) A household may add a new member only during an open enrollment period under Section R414-320-16. A child is not subject to the open enrollment period.~~

~~_____ (d) The eligibility agency shall consider income of the new member at the next scheduled review.~~

]R414-320-11[4]. Eligibility Decisions and Eligibility Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013[0] ed., regarding eligibility determinations,[which are incorporated by reference.]

(2) ~~[When an individual applies for UPP,]~~ At application and review, the eligibility agency shall determine whether the individual applying for UPP enrollment is eligible for Medicaid.

(a) An individual who qualifies for Medicaid without paying a spenddown~~[, a poverty level, pregnant woman asset copayment,]~~ or an MWI premium cannot enroll in the UPP program.~~[If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual does not provide the requested information.]~~

(b) An individual who must pay a spenddown or MWI premium to receive Medicaid may enroll in UPP if the individual elects not to receive Medicaid.~~[If the individual must pay a spenddown, a poverty level, pregnant woman asset copayment or an MWI premium to qualify for Medicaid, the individual may choose to enroll in the employer-sponsored health insurance and the UPP program. The individual may enroll in UPP only during an open enrollment period, except that a child is not subject to an open enrollment period, and must meet all the eligibility criteria.~~

~~_____ (c) At each review for UPP reenrollment, the eligibility agency shall decide whether the enrollee is eligible for Medicaid. If the individual qualifies for Medicaid without a spenddown, a poverty level, pregnant woman asset copayment or an MWI premium, the individual cannot reenroll in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the review if the individual does not provide the requested information.]~~

~~_____ (3) An individual who is open for Medicaid, PCN or CHIP may request to enroll in the UPP program.~~

~~_____ (a) A new application form is not required.~~

~~_____ (b) The rules in Section R414-320-12 govern the effective date of enrollment.~~

~~_____ (c) A new income test must be completed for the individual. If the individual's income places the UPP household over the income limit for UPP, the individual is not eligible to enroll in UPP.~~

~~_____ (d) If the individual is moving from PCN or CHIP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.~~

~~_____ (e) If the individual was previously on UPP, became eligible for Medicaid, and requests to reenroll in UPP without a break in coverage, the eligibility agency shall waive the open enrollment period and the requirement in Subsection 414-320-6(2).~~

~~_____ (f) If the individual is moving from Medicaid and was not previously on UPP, or there has been a break in coverage of one or more months, an adult individual must reapply during an open enrollment period.~~

~~_____ (g) For a PCN or CHIP individual who enrolls in an employer-sponsored health plan, the eligibility agency shall waive the requirement found in Subsection 414-320-6(2) if the change is reported within ten calendar days of signing up for coverage or within ten calendar days after coverage begins, whichever is later.~~

~~_____ (h) All other eligibility requirements must be met.~~

~~_____ (3) To enroll in UPP, the individual must meet enrollment criteria during an open enrollment period under the provisions of Section R414-320-16, except that a child is not subject to open enrollments.~~

~~_____] (4) The eligibility agency shall ~~complete a determination of eligibility or ineligibility for~~ process each application to a decision unless:~~

~~(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;~~

~~(b) the applicant dies;~~

~~(c) the applicant cannot be located; or~~

~~(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if that date is later.~~

~~(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916. [at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency uses available, reliable sources to gather necessary information to complete the review.]~~

~~_____ (a) The agency may request a recipient to contact the agency to complete the eligibility review.~~

~~_____ (b) The agency shall provide the recipient a written request for verification needed to complete the review.~~

~~_____ (c) The agency shall provide proper notice of an adverse decision.~~

~~_____ (d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.~~

~~_____ (6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency shall end eligibility effective the end of the month for which the agency sends proper notice to the recipient.~~

~~_____ (a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.~~

~~_____ (b) The application processing period applies to this request to reapply.~~

~~_____ (6) The eligibility agency may ask the enrollee to respond to a request to complete the review process. The eligibility agency shall end the enrollee's eligibility effective at the end of the review month if the enrollee fails to respond to the request. The eligibility agency shall treat a response from the enrollee to complete the review or reapply as a new application if the enrollee responds to the review request or reapplies by the end of the month immediately following the review month. The application processing period applies for this new request for coverage.~~

~~_____ (a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.~~

~~_____] (b)c Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.~~

~~_____ (d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible. [Upon receiving verification, the~~

~~eligibility agency shall redetermine eligibility and notify the enrollee. The agency shall send a denial notice to the enrollee if the enrollee fails to return verification within the application processing period or if the agency determines that the enrollee is ineligible.]~~

~~(e)g The eligibility agency may not continue eligibility while it makes a new eligibility determination.~~

~~(e)f During these three calendar months, the eligibility agency shall waive the open enrollment period requirement and the requirement at Subsection R414-320-6(2). [The eligibility agency shall waive the open enrollment period requirement and the requirement found at Subsection R414-320-7(2) if the enrollee completes the review process or reapplies in the calendar month immediately following the effective closure date.]~~

~~(e)g If the enrollee does not respond to the request to complete a review for UPP during the three calendar months immediately following the review closure date, the enrollee must reapply for UPP and meet all eligibility criteria. [The new certification period begins the day after the closure date if the enrollee becomes eligible.]~~

~~_____ (7) The eligibility agency may request verification from the enrollee if the enrollee responds to the review request during the review month.~~

~~_____ (a) The eligibility agency shall send a written request for the necessary verification.~~

~~_____ (b) The enrollee has at least ten calendar days from the notice date to provide the requested verification to the eligibility agency.~~

~~_____ (8) The eligibility agency shall determine eligibility and notify the enrollee of its decision if the enrollee responds to the review request on time and provides all verification by the verification due date.~~

~~_____ (a) The eligibility agency shall send proper notice of an adverse decision when the decision affects eligibility for the month that follows the review month.~~

~~_____ (b) The eligibility agency shall extend eligibility to the due process month when the agency does not send proper notice of an adverse change. The eligibility agency shall send proper notice of the adverse decision that becomes effective the first of the month after the due process month.~~

~~_____ (9) The eligibility agency shall extend eligibility to the due process month if the enrollee responds to the review request during the review month and the verification due date is during the due process month. The enrollee must provide all verification by the verification due date.~~

~~_____ (a) The eligibility agency shall determine eligibility and send proper notice of its decision when the enrollee provides all requested verification by the verification due date.~~

~~_____ (b) The eligibility agency shall end eligibility effective the end of the month in which it sends proper notice of the closure date if the enrollee does not provide all requested verification by the verification due date.~~

~~_____ (c) The eligibility agency shall treat the date that it receives all verification as a new application date if the enrollee returns all verification after the verification due date and before the effective closure date. The agency shall determine the enrollee's eligibility and notify the enrollee.~~

~~_____ (d) The eligibility agency shall waive the open enrollment period during the due process month, and for a reapplication received before the effective closure date. The eligibility agency also waives~~

the requirement found at Subsection R414-320-7(2) if the enrollee completes the review or reapplies before the effective closure date.

(c) The eligibility agency may not continue eligibility while it makes an eligibility determination. If the agency determines that an enrollee is eligible, the new certification date for the application is the day after the effective closure date.

(10) The eligibility agency shall provide ten day notice of a case closure if the agency determines that the enrollee is ineligible or if the enrollee fails to provide verification by the verification due date.]

(11) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date, when the closure is for a reason other than an incomplete review, [7]the eligibility agency will process the request as a new application and[shall] waive the open enrollment period and the requirement found at Subsection R414-320-[7]6(2)[if an enrollee reapplies in the calendar month immediately following the effective closure date].

(12)8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.[and must meet all eligibility criteria.]

(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-320-12[5]. Effective Date of Enrollment[~~Change Reporting~~] and Enrollment Period.

(1) Subject to Section[s] R414-320-[7]6,[~~R414-320-9 and R414-320-16~~] and the limitations in Section R414-306-[6]4, the effective date of enrollment in the UPP program is the first day of the application month.

(a) The effective date of enrollment for a newborn or adopted child is the date of birth or the date of adoption, if the request is made within 30 days of the date of birth or adoption.

(b) If the request to add a newborn or adopted child is made after 30 days of the date of birth or the date of adoption, enrollment is effective on the first day of the month in which the date of request occurs.

(2) An individual who is approved for the UPP program must enroll in the employer-sponsored health plan or COBRA[~~continuation coverage~~] within 30 days of receiving an approval notice from the eligibility agency.[~~Eligibility for UPP is a qualifying event and employers must allow the individual to enroll in the health insurance plan upon approval.~~]

(3) If the applicant does not enroll in the employer-sponsored health insurance plan or COBRA within 30 days of the date that the eligibility agency sends the UPP approval notice, the eligibility agency shall deny the application.

(2)4) The Department may not reimburse the enrollee for premiums before the effective date of enrollment and not before the month in which the enrollee pays a health insurance or COBRA premium[~~that the enrollee verifies to the eligibility agency~~]. The enrollee must verify the premium payment.

(5) The effective date of enrollment for an individual moving directly from Medicaid, PCN, or CHIP is the first day of the month after eligibility for Medicaid, PCN, or CHIP ends.

(3) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage that meets the requirements of Subsection R414-320-2(14) within 30 days

of the date that the eligibility agency sends the UPP approval notice, DWS shall deny the application. The individual may reapply during another open enrollment period, except that a child is not subject to the open enrollment period.

(4) The effective date of enrollment for a newborn or newly adopted child is the date of birth or the date that the child is placed for adoption if the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage and the family requests UPP coverage within 30 days of the birth or placement for adoption. If the family makes the request after 30 days of the birth or placement for adoption, enrollment becomes effective on the first day of the month in which the date of report occurs.

(a) The requirement found at Subsection R414-320-7(2) does not apply if the request for UPP enrollment occurs during such 30 days.

(b) If the request for UPP enrollment is made more than 30 days after the date of birth or date of placement for adoption, the child must meet the requirements of Section R414-320-7.

(5) An enrollee may request to add a spouse to UPP coverage during the certification period.

(a) If the spouse had previous UPP coverage, but became eligible for Medicaid or PCN, the enrollee may add the spouse to UPP without waiting for an open enrollment period. Eligibility for the spouse becomes effective the month after coverage for Medicaid or PCN ends if there is no break in coverage. A spouse moving back to UPP from Medicaid may reenroll in UPP even if the spouse is enrolled in the employer-sponsored health insurance at the time of request and there is no break in coverage between Medicaid and UPP.

(b) If the spouse did not have previous UPP coverage, but is moving directly from PCN to UPP coverage, the effective date of enrollment is the first day of the month after PCN ends. The spouse does not have to wait for an open enrollment period. If the spouse is not moving directly from PCN to UPP coverage, the spouse may enroll in UPP during an open enrollment period. The eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(6) An enrollee may request to add a dependent child to UPP coverage during the certification period.

(a) If the child had previous UPP coverage, but became eligible for Medicaid or CHIP, the effective date of enrollment is the first day of the month after Medicaid or CHIP ends if there is no break in coverage.

(b) If the child is not moving from another medical assistance program to UPP, the eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(c) If the child is a newborn or has recently been placed for adoption with the enrollee, the provision in Subsection R414-320-15(4) applies.

(7)6) The effective date of reenrollment in UPP after the eligibility agency completes the periodic [eligibility]review, is the first day of the month after the review month, or the first day after the due process month. [The eligibility agency shall complete the review as described in Subsection R414-320-14(8) or (9), and the enrollee must continue to meet eligibility criteria.]Subsection R414-320-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for incomplete review.

~~(8)Z~~ An individual who becomes eligible for UPP is enrolled for a 12-month certification period that begins with the first month of eligibility. ~~[If the enrollee completes the review process and continues to be eligible, the recertification period continues for an additional 12 months, except that the eligibility agency may not count a due process month associated with a review in the new 12-month recertification period.]~~

~~(9)8~~ The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

- ~~(a) The individual turns 65 years of age;~~
- ~~(b) An enrolled child turns 19 years of age and was covered by the parent's or guardian's health insurance plan;~~
- ~~(c) The individual becomes entitled to receive Medicare;~~
- ~~(d) The individual becomes covered by VA Health Insurance, or fails to apply for VA health system coverage when potentially eligible;~~
- ~~(e) The individual dies;~~
- ~~(f) The individual moves out of state or cannot be located;~~

or

- ~~(g) The individual enters a public institution or an Institution for Mental Disease.~~

~~(10)9~~ The eligibility agency shall end eligibility if an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA ~~[continuation coverage].~~

~~(a) The enrollee may switch to the PCN program [for the rest of the certification period] if the enrollee meets PCN eligibility requirements, [discontinues enrollment in employer-sponsored insurance involuntarily and does not enroll in COBRA continuation coverage, or if the individual discontinues COBRA coverage voluntarily or involuntarily. The individual must meet the PCN income test.~~

~~(b) The enrollee must notify the eligibility agency within ten calendar days after the enrollee's insurance coverage ends to be eligible to switch to PCN outside of an open enrollment period.~~

~~(c) The eligibility agency shall complete a new eligibility determination and the individual must pay a PCN enrollment fee for the new 12-month certification period if the change occurs in the last month of the UPP certification period.~~

~~(11) When the enrollee reports other changes, the eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility. The eligibility agency shall send proper notice of changes in eligibility. The agency may end eligibility if the enrollee fails to report changes within ten calendar days. Other changes that may affect eligibility or benefits occur when:~~

- ~~(a) an enrollee changes health insurance plans or has a COBRA qualifying event; or~~
- ~~(b) the amount of the premium changes that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage.~~

~~(12) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.~~

~~(13) A child enrolled in UPP may discontinue employer-sponsored health insurance or COBRA continuation coverage and UPP, and move to direct coverage under CHIP at any time during the certification period without any ineligibility period.~~

~~(14) An individual who is enrolled in PCN or CHIP and who enrolls in an employer-sponsored health plan or COBRA continuation coverage may switch to the UPP program. The individual~~

~~must report to the eligibility agency within ten calendar days of signing up for an employer-sponsored plan or COBRA continuation coverage, or within ten days after coverage begins, whichever is later.~~

~~(a) The eligibility agency shall add the individual for the rest of the certification period if the household has an open UPP case.~~

~~(b) The eligibility agency shall approve a new 12-month certification period if the household does not have an open UPP or PCN case. If the household has an open PCN case, eligibility under UPP continues through the end of the PCN certification period.~~

~~(15) If an UPP case closes for any reason, other than to become covered by another Medicaid program, PCN or CHIP, and remains closed for one or more calendar months, the individual must submit a new application to the eligibility agency during an open enrollment period to reapply, except that a child is not subject to the open enrollment period. The individual must meet all the requirements of a new applicant.~~

~~(16) If an UPP case closes because the enrollee is eligible for another Medicaid program, PCN or CHIP, the individual may reenroll in UPP if there is no break in coverage between the programs, even when the eligibility agency stops enrollment under Subsection R414-320-16(2).~~

~~(a) The individual may reenroll during the current 12-month certification period for UPP, PCN or CHIP. The eligibility agency may not require the individual to complete a new application or have a new income eligibility determination.~~

~~(b) The individual may still reenroll in UPP if the previous 12-month certification period has ended and the individual is moving from Medicaid. The individual must meet eligibility and income guidelines for the new certification period.~~

~~(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period, except that a child is not subject to the open enrollment period.~~

~~(d) If the individual reapplies in the month immediately following the closure, the eligibility agency waives the open enrollment period and the provision in Subsection R414-320-7(2). The individual must meet all other UPP requirements.~~

~~(17) The eligibility agency shall end eligibility effective at the end of the month in which the agency sends proper notice if the agency requests verification of a reported change and the enrollee fails to return the verification. The eligibility agency shall treat the verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date. The eligibility agency shall waive the open enrollment period, and if the enrollee is eligible, continue eligibility for the rest of the certification period. The eligibility agency shall send a denial notice to the enrollee if the enrollee is ineligible.~~

~~(18) An enrollee may request a Medicaid determination of eligibility when there is a change of income during the certification period.~~

~~(a) The eligibility agency shall end UPP enrollment and change the enrollee's coverage to Medicaid if the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without cost.~~

~~(b) If the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid with a spenddown, MWI premium or a poverty level, pregnant woman asset copayment, the enrollee may choose to remain on UPP.]~~

R414-320-13[6]. Change Reporting and Benefit Changes[Open Enrollment Period:]

(1) Enrollees are required to report changes to the eligibility agency as defined in Subsection R414-320-3(2).

(a) The eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility.

(b) The eligibility agency shall send proper notice of changes in eligibility.

(2) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(3) An eligible household may request enrollment for an individual not enrolled in UPP; the application date for the individual is the date of the request.

(a) A new application form is not required.

(b) The eligibility agency determines the individual's eligibility for UPP in accordance with Section R414-320-11.

(c) The eligibility agency shall determine the effective date of enrollment for individuals in accordance with Section R414-320-12.

(d) The eligibility agency shall waive the requirement found in Subsection R414-320-6(2) if the individual is a newborn or adopted child, and the request to add the child is made within 30 days of the date of birth or adoption.

(e) A new income test must be completed for the individual. If the individual's income places the UPP household over the income limit for UPP, the individual is not eligible to enroll in UPP.

(f) All other eligibility requirements must be met.

(4) An enrollee may request a Medicaid determination of eligibility when there is a change of income during the certification period.

(a) The eligibility agency shall end UPP enrollment and change the enrollee's coverage to Medicaid if the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without cost.

(b) If the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid with a spenddown or MWI premium, the enrollee may choose to remain on UPP.

~~_____ (1) The eligibility agency accepts applications for enrollment at times when sufficient funding is available to justify enrollment of more individuals. The eligibility agency limits the number it enrolls according to the funds available for the program.~~

~~_____ (2) The eligibility agency may stop enrollment of new individuals at any time based on availability of funds.~~

~~_____ (3) The eligibility agency may not accept applications or maintain waiting lists during a period that it stops enrollment of new individuals.~~

~~_____ (4) A child is not subject to the open enrollment requirement to enroll in UPP.~~

]

R414-320-14[7]. Notice and Termination.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The eligibility agency shall end an individual's enrollment if the individual fails to complete the periodic review process on time.

(4) The eligibility agency shall notify an enrollee in writing at least ten days before ~~[taking a proposed]~~ the effective date of an action adversely affecting the enrollee's eligibility. The notice must include:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support an adverse action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The eligibility agency need not give ten-day notice of termination if:

(a) the enrollee is deceased;

(b) the enrollee moves out-of-state and is not expected to return; or

(c) the enrollee enters a public institution or institution for mental disease.

R414-320-15[8]. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that an individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under the UPP program for which the individual is not eligible must repay the Department for the cost of the benefits that he receives.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a period that the enrollee is not eligible to receive the benefits.

R414-320-16[9]. Benefits.

(1) The UPP program shall provide cash reimbursement to enrollees.

(2) The reimbursement may not exceed the amount that the enrollee pays toward the cost of the employer-sponsored health plan, employer-sponsored plans selected through UHE, or COBRA continuation coverage.

(3) The UPP program may reimburse an adult up to \$150 each month.

(4) The UPP program may reimburse a child up to \$120 each month for medical coverage. The UPP program will pay the child an additional \$20 if the child elects to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, a child may receive cash reimbursement up to \$120 for the medical insurance cost and may receive dental-only benefits through CHIP.

(b) When the employer also offers employer-sponsored dental coverage, the applicant may choose to enroll a child in the employer-sponsored dental coverage, in which case, the UPP program will pay the child an additional \$20. The enrollee may also choose to only enroll the child in the employer-sponsored health insurance and UPP, and not enroll the child in the employer-sponsored dental coverage, in which case the child may receive dental-only benefits through CHIP.

KEY: CHIP, Medicaid, PCN, UPP

Date of Enactment or Last Substantive Amendment: [~~October 1, 2012~~]**2014**

Notice of Continuation: October 13, 2011

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

**Health, Family Health and
Preparedness, Primary Care and Rural
Health
R434-40
Utah Health Care Workforce Financial
Assistance Program Rules**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38305

FILED: 02/18/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is required by Section 26-46-102. The statute gives the responsibility that in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the administration of the program, including rules that address: at application procedures; eligibility criteria; selection criteria; service conditions; penalties for failure to comply with service conditions; criteria for modifying or waiving service conditions; and administration of contracts. The Act allows the department to provide professional education scholarships and loan repayment assistance to health care professionals who locate or continue to practice in underserved areas. Applicants selected to receive an award under this chapter will fulfill a service obligation at a site designated by the department as an underserved area, meaning an area underserved by health care professionals, based upon the results of a needs assessment.

SUMMARY OF THE RULE OR CHANGE: The rules govern the administration of the program, including: application procedures; eligibility criteria; selection criteria; service conditions; penalties for failure to comply with service conditions; criteria for modifying or waiving service conditions;

and administration of contracts. The Act and rule allow the department to provide professional education scholarships and loan repayment assistance to health care professionals who locate or continue to practice in underserved areas. Applicants selected to receive an award fulfill a service obligation at a site designated by the department as an underserved area, meaning an area underserved by health care professionals, based upon the results of a needs assessment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-46-101(1) and Subsection 26-46-103(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The rule will impose minor costs and duties to state government. These costs will be administrative costs to the program. The rule represents no change in past operations.

◆ **LOCAL GOVERNMENTS:** There are no expected costs to local governments, other than the time it would take for them to fill out and complete the competitive employment site application. The rule is only an administrative changes and represents no change in past operations.

◆ **SMALL BUSINESSES:** There are no expected costs to small businesses, other than the time it would take for them to fill out and complete the competitive employment site application. The rule represents no change in past operations. Rule does not apply to this group.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no expected costs to other persons or entities, other than the time it would take for them to fill out and complete the competitive employment site application. The rule represents no change in past operations. Rule is only an administrative change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs. The rule represents no change in past operations. Rule is only an administrative change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no adverse effect on business.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
PRIMARY CARE AND RURAL HEALTH
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Erin Olsen by phone at 801-273-6618, by FAX at 801-273-4146, or by Internet E-mail at elolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.

R434-40. Utah Health Care Workforce Financial Assistance Program Rules.

R434-40-1. Purpose.

This rule implements the Utah Health Care Workforce Financial Assistance Program Act, Utah Code, Title 26, Chapter 46; which governs the award of grant funds to geriatric professionals and health care professionals to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become nurse educators in exchange for serving for a specified period of time in a underserved area of the state.

R434-40-2. Authority.

This rule is required by Subsections 26-46-102(3) and 26-46-103(6)(a), and is promulgated under the authority of Section 26-1-5.

R434-40-3. Definitions.

The definitions as they appear in Section 26-46-101 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under the act.

(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule and that is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) that is a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.

(4) "Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.

(5) "Department" means the Utah Department of Health.

(6) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(7) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(8) "Geriatric" means individuals 65 years old and older.

(9) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:

a. graduate level certification in gerontology from a nationally accredited certifying organization or transcripted program of an accredited academic institution;

b. graduate degree in gerontology;

c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include, but is not limited to, internship, practicum, preceptorship, residency, or fellowship.

(10) "Grant" means a grant of funds under a grant agreement.

(11) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period of time at an approved site.

(12) "Mental health therapist" means an individual licensed under:

(a) Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act; or

(b) Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy.

(13) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(14) "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

(15) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.

(16) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.

(17) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.

(18) "Physician" means an individual licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(19) "Physician assistant" means an individual licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.

(20) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for geriatric professional and health care professionals licensure and as required by this rule.

(21) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.

(22) "Scholarship" means a grant of funds for educational expenses given to an individual under a grant agreement where the individual agrees to become a nurse educator in exchange for service for a specified period of time at an approved site that is a Utah nursing school or training institution.

(23) "Service obligation" means professional service rendered at an approved site for a minimum of two years in exchange for a scholarship or loan repayment grant.

R434-40-4. Geriatric Professionals and Health Care Professionals Loan Repayment Grants -- Terms and Service.

(1) To increase the number of geriatric professionals and health care professionals in underserved areas of the state, the Department may provide loan repayment grants to geriatric professional and health care professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Loan repayment grants may be given only to repay bona fide loans taken by a geriatric professional and health care professional for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies a geriatric professional and health care professional to practice in his field.

(3) Loan repayment grants under this section may not:

(a) be used to satisfy other obligations owed by the geriatric professional and health care professional under any similar program and may not be used to repay a loan that is in default at the time of application; or

(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant monies under the act until the recipient has performed at least six months of service at the approved site.

R434-40-5. Health Care Professionals Scholarship Grants -- Terms and Service.

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Scholarship grants may be given to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt of a degree or completion of specified additional course work in a number of years as established by the Department.

R434-40-6. Loan Repayment Grant Administration.

(1) The Department may award loan repayment grants to repay loans taken for geriatric professionals' and health care professionals' educational expenses. The Department may consider committee recommendations in awarding loan repayment grants.

(2) As requested by the Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department shall not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds him to the terms of the program.

(8) A loan repayment grant recipient must have a permanent, unrestricted license to practice in his health care specialty in Utah before his first day of service under the grant agreement.

(9) Prior to beginning to fulfill his service obligation, a loan repayment grant recipient must obtain approval from the Department, of the site where he may complete his service obligation.

(10) A loan repayment grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

R434-40-7. Scholarship Grant Administration.

(1) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree. The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section 26-46-1 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in his grant agreement with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient must obtain approval from the Department prior to beginning service obligation at an approved site.

(9) A scholarship grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

(10) A scholarship grant recipient must obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

R434-40-8. Eligible Bona Fide Loans.

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying geriatric professional or health care professional degree approved by the Department.

(2) A bona fide loan includes the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

(d) a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

R434-40-9. Full-Time Equivalency Provisions for Recipients.

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant recipient agrees to work.

(2) A loan repayment grant recipient who provides services for at least 40 hours per week may be awarded a loan repayment grant based on the percentages as determined by the Department.

(3) A loan repayment grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower loan repayment grant based on a full-time equivalency of 40 hours per week.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40 hour work week.

R434-40-10. Approved Site Determination.

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with incomes under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

(c) the percentage of the population under 18 years of age;

(d) the distance to the nearest geriatric professionals or health care professionals and barriers to reaching the geriatric professionals or health care professionals;

(e) ability of the site to provide support facilities and services for the requested geriatric professional or health care professional;

(f) financial stability of the site; and

(g) percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.

(3) The criteria the Department may use to determine an approved site for sites that are nursing schools include:

(a) a demonstrated shortage of nursing educator faculty;

(b) number of and degrees sought by students;

(c) number of students denied for each degree sought;

(d) residency of students;

(e) ability of the nursing school to provide support facilities and services for the requested position to be trained;

(f) faculty to student ratio, including ratios of clinical and classroom instructors;

(g) average class sizes for each of the degrees offered by the school;

(h) school plans to expand enrollment;

(i) diversity of students;

(j) current and projected staffing for the type of instructor requested;

(k) sources and stability of funding to hire and support the prospective instructor; and

(l) distance to the next closest nursing school.

(4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:

(a) a majority of practicing health care professionals;

(b) county and civic leaders;

(c) hospital administrators;

(d) business leaders, local chamber of commerce, citizens; and

(e) local health departments.

(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a shortage of health care professional(s) and that are requesting one of the following medical specialties:

(a) family practice;

(b) internal medicine;

(c) obstetrics/gynecology; and

(d) pediatrics.

(6) To become approved, a site must offer a salary and benefit package competitive with salaries and benefits of other

geriatric professionals and health care professionals in the service area.

(7) Other criteria that the site applicant can demonstrate as furthering the purposes of the act.

R434-40-11. Loan Repayment Grant Eligibility and Selection.

(1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;

(b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to serve in an underserved area;

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the Department that establishes his professional competence or conduct;

(d) the applicant's financial need;

(e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(f) the applicant's willingness to provide care regardless of a patient's ability to pay;

(g) the applicant's ability and willingness to provide care; and

(h) the applicant's achieving an early match with an approved site.

(3) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent resident.

(4) The Department may consider only grant applicants who apply within one year of the applicant's beginning employment at an approved eligible site.

R434-40-12. Scholarship Grant Eligibility and Selection.

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to the medically underserved.

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school;

(e) the applicant's projected educational expenses;

(f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and

(g) the applicant's essay which is required as part of the scholarship application;

(2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.

(3) To be eligible to receive a scholarship grant, an applicant must be a United States citizen or permanent resident.

R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.

(1) Before receiving an award under the act, the recipient shall enter into a grant agreement with the state agreeing to the conditions upon which the award is to be made.

(2) The grant agreement shall include necessary conditions to carry out the purposes of the act.

(3) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.

(4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.

(5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under the act.

(6) A scholarship grant recipient must:

(a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to R434-40-16;

(b) within three months before and not exceeding one month following graduation or completion of postgraduate training, a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire him.

(c) upon completion of schooling or postgraduate training, the scholarship grant recipient must find employment at an approved site.

(d) obtain an unrestricted license to practice in Utah prior to beginning to fulfill the service obligation at the approved site.

(e) obtain approval from the Department prior to beginning to fulfill his service obligation at an approved site.

(f) begin employment at the approved site within three months of graduation or completion of postgraduate training.

(g) obtain Department approval prior to changing the approved site where he fulfills his service obligation.

R434-40-14. Loan Repayment Grant Breach, Repayment, and Penalties.

(1) A loan repayment grant recipient under the act who fails to complete the service obligation shall:

(a) pay as a penalty twice the total amount of the loan repayment grant on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and

(b) costs and expenses incurred in collection, including attorney fees.

(2) A loan repayment grant recipient who breaches his grant agreement with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching loan repayment grant recipient who does not begin to repay within 30 days.

(3) The breaching loan repayment grant recipient shall pay the total amount due within one year of breaching the grant agreement. The scheduled payback may not be less than four equal quarterly payments.

(4) The amount to be paid back shall be determined from the end of the month in which the loan repayment grant recipient breached the grant as if the recipient had breached at the end of the month.

(5) The breaching loan repayment grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the grant agreement.

(6) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

R434-40-15. Scholarship Grant Breach, Repayment, and Penalties.

(1) A scholarship grant recipient who :

(a) fails to finish his professional schooling within the period of time agreed upon with the Department shall within 90 days after the deadline for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, shall repay:

(i) all scholarship money received according to a schedule established at the time of the award with the Department;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant agreement; and

(iii) costs and expenses incurred in collection, including attorney fees;

(b) finishes his schooling and fails to pass the necessary professional certifications or examinations within the time period agreed upon with the Department shall repay:

(i) all scholarship money received according to a schedule established by grant agreement with the Department;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant; and

(iii) costs and expenses incurred in collection, including attorney fees;

(c) finishes his schooling and fails to take the necessary professional certifications or examinations within the time period agreed upon with the Department shall:

(i) pay as a penalty twice the total amount of the scholarship money on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and

(ii) costs and expenses incurred in collection, including attorney fees;

(d) finishes his schooling and becomes a health care professional but who fails to fulfill his service obligation shall repay:

(i) twice the total scholarship grant amount received that is not yet retired by his service on a prorated basis according to a schedule established by grant agreement with the Department;

(ii) 12% per annum interest on the unretired scholarship money calculated from the date each installment was received under the scholarship grant agreement; and

(iii) costs and expenses incurred in collection, including attorney fees.

(2) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

(3) The amount to be paid back shall be determined from the end of the month in which the scholarship grant recipient breached the scholarship grant as if the scholarship grant recipient had breached at the end of the month

(4) The breaching scholarship grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the scholarship grant agreement.

R434-40-16. Extension of Loan Repayment and Scholarship Grants.

(1) The Department may extend the period within which the loan repayment grant recipient must complete the service obligation:

(a) if the loan repayment grant recipient has signed a grant agreement for two years the loan repayment grant recipient may apply on or after his first day of service under a loan repayment grant to extend his grant agreement by one year;

(b) a loan repayment grant may be extended only at an approved site;

(c) a loan repayment grant recipient who desires to extend his loan repayment grant must inform the Department in writing of his interest in extending his grant agreement at least six months prior to the end of the current service obligation.

(2) The Department may extend the period within which the scholarship grant recipient must complete his education:

- (a) if the scholarship grant recipient has a serious illness;
(b) if the scholarship grant recipient is activated by the military;
(c) for other good cause shown, as determined by the Department.
(3) The service obligation may be extended only at an approved site.

R434-40-17. Release of Recipient from Service Obligation.

(1) The Department may cancel or release, in full or in part, a recipient from his service obligation under the grant agreement without penalty:

- (a) if the service obligation has been fulfilled;
(b) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment or scholarship grant conditions;
(c) if the recipient is unable to fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;
(d) if the recipient dies; or
(e) for other good cause shown, as determined by the Department.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

- (a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit;
(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

(3) The Department may develop alternative service obligation criteria that a loan repayment or scholarship grant recipient may use to fulfill his service obligation if the loan repayment or scholarship grant recipient is unable to fulfill his service obligation at an approved site due to reasons beyond his control.

R434-40-18. Reporting Requirements of Award Recipients.

The Department may require an award recipient to provide information regarding the academic performance, commitment to underserved areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in school; postgraduate training; and during the period the award recipient is completing the service obligation.

R434-40-19. Reporting Requirements of Approved Sites.

The Department may require the approved site to provide information regarding the award recipients' performance, commitment to underserved areas, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the award recipient is completing the service obligation.

KEY: medically underserved, grants, scholarships

Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 26-4-102

Insurance, Administration **R590-195** Car Rental Related Licensing Rule

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 38308

FILED: 02/20/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because it has been codified as a result of legislation passed during the 2013 General Legislative Session in H.B. 47, Insurance Law Amendments. The language in the rule was codified into Section 31A-23a-118, Car rental related licensing requirements.

SUMMARY OF THE RULE OR CHANGE: The language in the rule was codified into Section 31A-23a-118, Car rental related licensing requirements. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-23a-106(2)(b) and Subsection 31A-23a-110(1) and Subsection 31A-23a-111(10)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No change in department or state budgets will occur as a result of this change since the requirements are the same, they have just been moved from a rule to the law.
- ◆ **LOCAL GOVERNMENTS:** The repeal of this rule will have no fiscal impact on local governments since it deals solely with the relationship between the department and its licensees.
- ◆ **SMALL BUSINESSES:** The repeal of this rule will have no fiscal impact on small businesses since the requirements in the rule have been moved to Section 31A-23a-118 of the Insurance Code.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repeal of this rule will have no fiscal impact on large businesses or individuals since the same requirements in the rule have been moved to Section 31A-23a-118 of the Insurance Code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of this rule will have no fiscal impact on businesses or individuals since the same requirements in the rule have been moved to Section 31A-23a-118 of the Insurance Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule will have no fiscal impact on business

since the requirements are still in force in the law now, rather than a rule.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.

[R590-195. Car Rental Related Licensing Rule.

R590-195-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsection 31A-23a-106(2)(b) that authorizes car rental related insurance as a limited line of authority of a limited line producer license type;

(3) Subsection 31A-23a-110(1) that authorizes the commissioner to prescribe the form in which licenses covered under Chapter 23a are to be issued; and

(4) Subsection 31A-23a-111(10) that authorizes the commissioner to prescribe by rule the license renewal and reinstatement procedures for licenses covered under Chapter 23a.

R590-195-2. Purpose and Scope.

(1) The purpose of this rule is to establish uniform criteria and procedures for the initial and renewal licensing of car rental related insurance limited line producer individuals and agencies, and to set standards of licensing and conduct for those in the car rental related insurance business in the State of Utah.

(2) This rule applies to all individuals and entities engaged in the issuance of car rental related insurance contracts or policies.

R590-195-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Sections 31A-1-301, 31A-23a-102, and the following:

(1) "Car rental related insurance" means any contract of insurance issued as a part of an agreement of rental of passenger automobiles and trucks to a gross vehicle weight of 45,000 pounds, for a period of 30 days or less; and

(2) "Car rental related license" means a limited line producer license type with a car rental related insurance limited line of authority.

R590-195-4. Agency License and Renewal.

(1) A car rental related license is issued for a two year license period and requires no examination or continuing education.

(2) A car rental related license must be renewed at the end of the two year licensing period in accordance with Chapter 23a of Title 31A and any applicable department rule regarding license renewal.

(3) Licensing is applicable to an individual or entity involved in the soliciting, quoting, marketing, or issuing of car rental related insurance and must be licensed in accordance with Chapter 23a of Title 31A and applicable department rules regarding individual and agency licensing.

(a) A car rental related license may be held by:

(i) an individual; or

(ii) an entity.

(b) An individual licensed under this rule must be:

(i) appointed by an insurer underwriting a car rental related insurance policy that the individual sells; or

(ii) designated to act by an agency licensed under this rule.

(c) An agency licensed under this rule must:

(i) be appointed by an insurer underwriting a car rental related insurance policy that the agency sells; and

(ii) have a designated responsible licensed individual at each location at which the agency is soliciting, quoting, marketing or selling car rental related insurance.

(4) An agency licensed under the terms of this rule may employ a non-licensed individual employed as a rental counter sales representative in soliciting, quoting, marketing or selling car rental related insurance. Such non-licensed individual must be:

(i) trained and supervised in the sale of car rental related insurance products; and

(ii) responsible to a licensed individual designated by the agency at each location where a car rental related insurance product is sold.

R590-195-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-195-6. Enforcement Date.

The commissioner will begin enforcing this rule on the effective date of the rule.

R590-195-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance licensing

Date of Enactment or Last Substantive Amendment: November 17, 2011

Notice of Continuation: March 11, 2009

~~Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-106; 31A-23a-110; 31A-23a-111]~~

Labor Commission, Adjudication
R602-2
Adjudication of Workers' Compensation
and Occupational Disease Claims

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38306

FILED: 02/19/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to impose certain requirements on parties during the adjudication process. The change also promotes judicial economy and improves efficiency. The change requires the parties to comply with discovery requests, imposes page limitations, grants administrative law judges the authority to rule on certain requests, and places limitations on objections to medical panel reports.

SUMMARY OF THE RULE OR CHANGE: The rule change imposes certain requirements on parties during the adjudication process. It also promotes judicial economy and improves efficiency. The change requires parties to comply with discovery requests in a timely and appropriate manner, limits page length of motions and types of motions, grants administrative law judges the authority to rule ex parte on requests for continuances, and places limitations on objections to medical panel reports.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The rule change imposes certain requirements on parties in the adjudication process, and promotes judicial economy and efficiency.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to the local governments. The rule change imposes certain requirements on parties in the adjudication process, and promotes judicial economy and efficiency.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The rule change imposes certain requirements on parties in the adjudication process, and promotes judicial economy and efficiency.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

The rule change imposes certain requirements on parties in the adjudication process, and promotes judicial economy and efficiency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no expected compliance cost for those affected by this rule change. The rule change imposes certain requirements on parties in the adjudication process, and promotes judicial economy and efficiency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses as a result of this rule change.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Heather Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.
3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.
4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or

absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits,

including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than ~~four~~two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions ~~[other than discovery motions]~~ shall be filed within ~~ten~~[10] days from the date the motion was filed with the Division. Reply memoranda shall be filed within ~~seven~~(7) days from the date a response was filed with the Division.

K. Motions - Length and Type

1. ~~Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.~~

a. ~~The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.~~

b. ~~The text of motions and memoranda shall be typeset in 12-point.~~

~~c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.~~

~~d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.~~

~~2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by the Administrative Law Judge.~~

L. Orders on Continuances.

~~The Administrative Law Judge may rule, ex parte, on requests for continuances.~~

~~[K.]M. Notices.~~

~~1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.~~

~~2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.~~

~~[L.]N. Form of Decisions.~~

~~Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.~~

~~[M.]O. Motions for Review.~~

~~1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within ~~20~~15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within ~~10~~5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:~~

~~a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;~~

~~b. Amend or modify the prior Order by a Supplemental Order; or~~

~~c. Refer the entire case for review under Section 34A-2-801, Utah Code.~~

~~2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.~~

~~a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.~~

~~b. The text of motions and memoranda shall be typeset in 12-point font.~~

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

[2]3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

[N]P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

[Θ]Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;
2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,
3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;
4. Conflicting medical opinions related to a claim of permanent total disability, and/or
5. Medical expenses in controversy amounting to more than \$10,000.

B. Objections and Responses.

1. Time. A written Objection to a medical panel report shall be due within 20 days of when the medical panel report is served on the parties. A Response to an Objection shall be filed within 10 days from the date the Objection was filed with the Division. A Reply to an Objection shall be filed within 5 days from the date the Response is filed with the Division.

2. Length. Without prior leave of the Administrative Law Judge, Objections shall not exceed 10 pages. Responses shall not exceed 7 pages, and Replies shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be

obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

3. Other than one Objection and one Response and one Reply, no other memoranda shall be considered without prior leave of the Administrative Law Judge.

4. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be \$125 per half hour for medical panel members and \$137.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after January 1, 2013.
2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first \$25,000, plus 20% of the weekly benefits generated in excess of \$25,000 but not exceeding \$50,000, plus 10% of the weekly benefits generated in excess of \$50,000, to a maximum of \$17,468.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed \$25,200;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed \$30,927.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

KEY: workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment: [~~December 24, 2012~~2014]

Notice of Continuation: June 19, 2012

Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

Natural Resources, Wildlife Resources R657-13 Taking Fish and Crayfish

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38316
FILED: 02/27/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: The proposed revision allows any Utah fishing license holder to fish anywhere on Lake Powell, including the Arizona portion of the reservoir without purchasing a reciprocal permit. Arizona residents and nonresident license holders would still be required to purchase the reciprocal permit to fish the Utah side of the lake.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment allows Utah license holders to fish all of Lake Powell with no additional licenses required. DWR determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only adds opportunity to anglers this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment provides additional opportunity to anglers, therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment provides additional opportunity to anglers, therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment provides additional opportunity to anglers, therefore DWR determines that these amendments do not create a cost or savings impact to individuals who participate in fishing in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-13. Taking Fish and Crayfish.

R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler may fish with two poles anywhere on Bear Lake that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.

(b) Only one daily limit may be taken in a single day even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one daily limit may be taken in a single day even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) ~~[Only Utah and Arizona residents are allowed]~~ Any person possessing a valid Utah fishing license is permitted to fish anywhere on Lake Powell, including the Arizona portion of the reservoir.

(d) A person possessing a valid Arizona fishing license shall be required to purchase a valid Utah reciprocal [permits] permit to fish [both sides] the Utah waters of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: ~~February 10,~~ 2014

Notice of Continuation: October 1, 2012

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3

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 April 14, 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 July 31, 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

**Money Management Council,
Administration
R628-21
Conditions and Procedures for the Use
of Reciprocal Deposits**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38180
FILED: 02/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R628-21-6, Limitation on use of Reciprocal Deposits, is being deleted by the Council after review of comments from Promontory and the Utah Bankers Association.

SUMMARY OF THE RULE OR CHANGE: Section R628-21-6 about limitations on the amount of these types of instruments that can be held by a public treasurer is being removed after comments received. Although it is a new type of investment, all funds placed in the investment are covered by federal insurance and are therefore protected from loss. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the January 1, 2014, issue of the Utah State Bulletin, on page 42. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-17(4)(b) and Subsection 51-7-18(2)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will not be costs or savings to the state budget as the rule provides procedures to public entities investing in these types of deposits. The change will not affect costs.
- ◆ LOCAL GOVERNMENTS: Local government entities are not affected as this is an additional investment available to them. The change will not affect costs.
- ◆ SMALL BUSINESSES: This rule only affects public entities and reciprocal depository providers. The change will not affect costs.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Reciprocal depository providers will have no additional cost or savings as they already provide services to non-public entities in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will not increase compliance costs, and the original rule has no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no costs or savings for government entities or for businesses.

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

THIS RULE MAY BECOME EFFECTIVE ON: 04/14/2014

AUTHORIZED BY: Mark Watkins, Chair, Money Management Council

R628. Money Management Council, Administration.

R628-21. Conditions and Procedures for the Use of Reciprocal Deposits.

R628-21-1. Authority.

This rule is issued pursuant to Section 51-7-17(4)(b) and 51-7-18(2)(b).

R628-21-2. Scope.

This rule applies to all public treasurers who purchase reciprocal deposits and to all qualified depositories providing reciprocal deposits.

R628-21-3. Purpose.

The purpose of this rule is to establish requirements for the investing of public funds in reciprocal deposits.

R628-21-4. Definitions.

For purposes of this rule the following terms are defined in Section 51-7-3 of the Act and when used in this rule have the same meaning as in the Act:

- (1) Council;
- (2) Commissioner;
- (3) Public funds;
- (4) Public treasurer;
- (5) Qualified depository, and;
- (6) Reciprocal deposits.

R628-21-5. General Rule.

(1) A public treasurer may invest public funds in reciprocal deposits only through qualified depositories that use a deposit account registry service. The public funds placed with a qualified depository into reciprocal deposits does not apply towards the maximum public funds allotment for that qualified depository as described in R628-11.

(2) Reciprocal deposits may only be initiated by qualified depository institutions and then re-deposited through a deposit account registry service as follows:

(a) in one or more FDIC insured depository institutions in amounts up to the relevant FDIC-insured deposit limit for a depositor in each depository institution; and

(b) in exchange for reciprocal FDIC-insured deposits made through the deposit account registry service to the qualified depository.

~~**[R628-21-6. Limitation on Use of Reciprocal Deposits.**~~

~~The maximum amount of any public treasurer's portfolio that can be invested in reciprocal deposits shall be as follows:~~

~~(1) Portfolios of \$10,000,000 or less may not invest more than 10% of the total portfolio in reciprocal deposits.~~

~~(2) Portfolios greater than \$10,000,000 but less than \$20,000,000 may not invest more than \$1,000,000 in reciprocal deposits.~~

~~(3) Portfolios of \$20,000,000 or more may not invest more than 5% of the total portfolio in reciprocal deposits.~~

~~**[R628-21-7]6. Insurance Requirements for a Deposit Account Registry Service.**~~

~~A deposit account registry service shall provide the public entity with proof of errors and omissions coverage equal to five percent of Utah public funds under management but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.~~

~~**R628-21-8]7. Reporting Requirements.**~~

~~(1) A public entity shall file a written report with the Council of reciprocal deposits on or before July 31 and January 31 of each year for deposits held on June 30 and December 31 respectively.~~

~~(2) Within 10 days of the end of each month, each qualified depository institution holding reciprocal deposits on behalf of public treasurers shall file a report with the Commissioner of the total month-end amount of Utah public funds in reciprocal deposits initially deposited into the qualified depository institution and currently re-deposited in one or more FDIC insured depository institutions.~~

**KEY: public funds, qualified depository, reciprocal deposits
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 51-7-17(4)
(b); 51-7-18(2)(b)**

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Pardons (Board of), Administration **R671-201-1** Schedule and Notice

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 38314
FILED: 02/26/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: According to Section 77-27-7, when an offender is committed to the custody of the Department of Corrections, the Board of Pardons and Parole conducts a hearing to establish a release date. The schedule of hearings is determined by Rule R671-201. The previous rule defined homicide and sexual offense charges for purposes of scheduling a hearing. However, the definition did not include attempt, solicitation or conspiracy to commit a homicide or sexual offense.

SUMMARY OF THE RULE OR CHANGE: Attempt, solicitation, or conspiracy to commit a homicide or sexual offense will be scheduled the same as a homicide or sexual offense.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-7

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: Attempted homicide or sexual offenses are a serious concern for public safety and must be included in the definition of hearing schedules.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The rule change does not alter the number of hearings conducted, only the scheduling of the hearings.
- ◆ **LOCAL GOVERNMENTS:** The new rule only changes internal Board operations and does not affect any local government entity.
- ◆ **SMALL BUSINESSES:** The rule changes the scheduling of parole hearings and does not affect small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule changes the scheduling of parole hearings and does not fiscally impact other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to the offender. The rule only changes the scheduling of the hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The new language only affects internal Board procedures, and has no affect on businesses, other state agencies, nor any city, town, county or other municipal entity.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

EFFECTIVE: 03/01/2014

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-201. Original Parole Grant Hearing Schedule and Notice.

R671-201-1. Schedule and Notice.

(1) Within six months of an offender's commitment to prison the Board ~~will~~ shall give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of ~~one week~~ (7 ~~calendar~~ days) prior notice should be given regarding the specific day and approximate time of such hearing.

(2)(a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, or any attempt, conspiracy or solicitation to commit any of these offenses.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. §77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3)(a) ~~All [felonies, where a life has been taken, will]~~ homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for [their] an original hearing [date]. In setting an original hearing for a homicide offense commitment, [T]the Board [will] shall only consider information available to the court or offender at the time of sentencing.

(b) Homicide offense commitments not eligible for parole (including sentences of life without parole or death) shall not be scheduled for original hearings.

(4) When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for [A] first degree felony [ies,] commitments [where death is not involved, and where] when the most severe sentence imposed and being served is a sentence [of] greater than [fifteen (15)] years to life, excluding enhancements [will be eligible for a hearing after the service of fifteen years].

(b) After the service of seven years for [A] first degree felony [ies,] commitments [where death is not involved, and where] when the most severe sentence imposed and being served is a sentence of [ten (10)] years to life, or [fifteen (15)] years to life, excluding enhancements [will be eligible for a hearing after the service of seven years].

(c) After the service of three years for [A] all other first degree felony [ies,] commitments [where death is not involved, will be eligible for a hearing after the service of three years].

(d) After the service of eighteen months if the most serious offense of incarceration is a second degree felony sexual offense commitment.

(e) After the service of six months for [A] all other second degree felony [ies, where death is not involved, will be eligible for a hearing after the service of six months unless the second degree is a sex offense and in those cases will be eligible for a hearing after the service of eighteen months] commitments.

(f) After the service of twelve months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for [A] all other third degree felony [ies, where a death is not involved,] and [all] class A misdemeanor[s, will be eligible for a hearing after the service of three months unless the third degree felony is a sex offense and in those cases will be eligible for a hearing after the service of twelve months] commitments.

~~[Excluded from the above provisions are inmates who are sentenced to death or life without parole.]~~

(5)(a) An offender [inmate] may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule [petition the Board to calendar him/her at a time other than the usual times designated above or the Board may do so on its own motion]. An offender's request [A petition by the inmate] shall [set out the special] specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion. [will notify the petitioner of its decision in writing as soon as possible.]

(b) The Board may, in its discretion, depart from the schedule as provided by this rule based upon an offender's request due to extraordinary circumstances, when an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled, or upon its own motion.

KEY: parole, inmates, hearings

Date of Enactment or Last Substantive Amendment: March 1, 2014

Notice of Continuation: January 26, 2012

Authorizing, and Implemented or Interpreted Law: 77-27-7

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.

Insurance, Administration **R590-195** Car Rental Related Licensing Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38307
FILED: 02/20/2014

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) authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code. Subsection 31A-23a-106(2)(b) authorizes car rental related insurance as a limited line of authority of a limited line producer license type. Subsection 31A-23a-110(1) authorizes the commissioner to prescribe the form in which licenses covered under Chapter 23a are to be issued. Subsection 31A-23a-111(10) authorizes the commissioner to prescribe by rule license renewal and reinstatement procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One comment was received in the past five years. It was in relation to amendments being made to the rule to make it compliant with language in the code and to correct formatting errors. The one comment was from industry and was in support of the changes being made to 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: This rule is no longer needed. The substance of this rule was codified into Section 31A-23a-118 with the passage of H.B. 47 during the 2013 General Legislative Session. The department is this day filing the necessary rulemaking form to repeal this rule. The rule is continued until the repeal can be made effective.

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: 02/20/2014

Insurance, Administration **R590-220** Submission of Accident and Health Insurance Filings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38311
FILED: 02/24/2014

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 31A-2-201.1 gives the commissioner the authority to write rules regarding rates, forms and reports. Subsection 31A-2-201(3) authorizes the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-2-202(2) gives the commissioner power reasonable to perform the duties imposed by Title 31A. Subsection 31A-22-605(4) authorizes the commissioner to write rules regarding the contents of policy provisions and minimum benefit standards; the content and format of the outline of provisions; the method of identifying policies and contracts; and rating practices. Subsection 31A-22-620(3)(f) authorizes the commissioner to adopt rules to prohibit policy provisions that would be unjust, unfair or unfairly discriminatory under a Medicare Supplement policy or certificate. Subsection 31A-30-106(1) sets standards for health benefit plans for individuals in individual and small employer groups; and Subsection 31A-30-106(4) requires carriers that offer health benefit plans to individuals to maintain at the carrier's principle place of business a description of their rating practices and renewal underwriting practices. Subsection 31A-30-106.1(13) requires small employer carriers to maintain at their principle place of business a complete and detailed description of its rating practices and renewal underwriting practices. Subsection 31A-30-106.1(14) authorizes the commissioner to write rules regarding rates and rating practices used by small employer carriers and rates charged for health benefit plans, as well as case characteristics used by small employer and individual carriers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Substantive and nonsubstantive changes were made to this rule during the past five years. At no time, during the comment periods, or otherwise, did the department receive written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is important in requiring that the department receive policy rate and form information from insurers necessary to make sure there is no unfair discrimination in the coverage health insurers provide and the rates charged. 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: 02/24/2014

**Insurance, Administration
 R590-225
 Submission of Property and Casualty
 Rate and Form Filings**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 38309
 FILED: 02/20/2014

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) authorizes the commissioner to write rules to implement the provisions of Title 31A. Section 31A-2-201.1 authorizes the commissioner to write rules with specific requirements for filing forms, rates or reports to the department. Subsection 31A-2-202(2) allows the commissioner to prescribe forms to gather information or use the National Association of Insurance Commissioner's annual statement forms to gather basic financial data and market regulation analysis. Section 31A-19a-203 allows the commissioner to write rules to prescribe procedures for submitting rate filings electronically.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule has been amended four different times during the past five years. At no time during the rulemaking process, or otherwise, did the department receive written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is important as it gives detailed instructions on how a filer must file rates, rules, and forms as required by Utah statute. 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: 02/20/2014

**Judicial Performance Evaluation
Commission, Administration
R597-1
General Provisions**

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

DAR FILE NO.: 38303
FILED: 02/17/2014

**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 articulates the purpose and intent of the Judicial Performance Evaluation Commission Act and supplements statutory definitions to clarify the Act. It is authorized by Subsection 78A-12-203(7), which authorizes the commission to make rules to administer the evaluation mandated by law. Without an articulated purpose and relevant definitions, the rules for administering the evaluation would make no sense.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Articulating the purpose and intent of the Act and providing clearly-understood definitions is fundamental to understanding both the statutory mandates and the other administrative rules that have been promulgated. Therefore, this rule should be continued.

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

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

AUTHORIZED BY: Anthony Schofield, Chair

EFFECTIVE: 02/17/2014

**Judicial Performance Evaluation
Commission, Administration
R597-3
Judicial Performance Evaluations**

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

DAR FILE NO.: 38304
FILED: 02/17/2014

**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 enacted primarily pursuant to Subsection 78A-12-203(7), authorizing rulemaking as necessary to administer judicial performance evaluations. Further, more specific authorization, is provided by Subsection 78A-12-203(3) for courtroom observation; Subsection 78A-12-203(2) for additional relevant evaluation factors; Subsection 78A-12-204(3) for additional classifications of survey respondents; Subsection 78A-12-204((11) to administer the surveys; and Subsection 78A-12-205(3) for additional minimum performance standards.

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.

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 fills in the detail that is not contained in the statute and allows the reader to more fully understand

the entire evaluation process. Therefore, this rule should be continued.

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

JUDICIAL PERFORMANCE EVALUATION COMMISSION ADMINISTRATION ROOM B-330 SENATE BUILDING 420 N STATE ST SALT LAKE CITY, UT 84114 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: ♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

AUTHORIZED BY: Anthony Schofield, Chair

EFFECTIVE: 02/17/2014

OR REQUIRE THE RULE: Subsection 53-13-103(1)(b)(xi) provides that the members of a law enforcement agency established by a private college or university may be law enforcement officers provided the law enforcement agency of the college or university has been certified by the Commissioner of Public Safety according to the rules of the Department of Public Safety.

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 during the last five-year period from interested persons 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: Continuation of this rule is necessary because it establishes the criteria a law enforcement agency of a private college or university must meet in order to be certified.

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

PUBLIC SAFETY ADMINISTRATION CALVIN L RAMPTON COMPLEX 4501 S 2700 W 1ST FLR SALT LAKE CITY, UT 84119-5994 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: ♦ Amy Lightfoot by phone at 801-718-7901, by FAX at 801-965-4608, or by Internet E-mail at alightfoot@utah.gov

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 02/21/2014

Public Safety, Administration **R698-4**

Certification of the Law Enforcement Agency of a Private College or University

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 38310 FILED: 02/21/2014

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

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

Family Health and Preparedness, Licensing

No. 38173 (AMD): R432-3. General Health Care Facility Rules Inspection and Enforcement

Published: 01/01/2014

Effective: 02/27/2014

Commerce

Real Estate

No. 38213 (AMD): R162-2f. Real Estate Licensing and Practices Rules

Published: 01/15/2014

Effective: 02/25/2014

Labor Commission

Adjudication

No. 38193 (AMD): R602-2-5. Timeliness of Decisions

Published: 01/15/2014

Effective: 02/21/2014

Environmental Quality

Radiation Control

No. 38146 (AMD): R313-70-5. Payment of Fees

Published: 12/01/2013

Effective: 02/18/2014

Money Management Council

Administration

No. 38179 (NEW): R628-20. Foreign Deposits for Higher Education Institutions

Published: 01/01/2014

Effective: 02/18/2014

Health

Disease Control and Prevention, Health Promotion

No. 38081 (NEW): R384-203. Prescription Drug Database Access

Published: 11/15/2013

Effective: 03/01/2014

Public Safety

Driver License

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Published: 01/15/2014

Effective: 02/21/2014

Disease Control and Prevention, Environmental Services

No. 38176 (AMD): R392-303. Public Geothermal Pools and Bathing Places

Published: 01/01/2014

Effective: 02/24/2014

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No. 38198 (AMD): R746-341. Lifeline/Link-up Rule

Published: 01/15/2014

Effective: 02/24/2014

End of the Notices of Rule Effective Dates Section

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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 28, 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/>).

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ABBREVIATIONS

<p>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</p>	<p>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</p>
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)
 CPR = Change in Proposed Rule

LNR = Legislative Nonreauthorization
 NEW = New Rule (Proposed Rule)

EMR = 120-Day (Emergency) Rule
 EXD = Expired Rule
 EXP = Expedited Rule
 EXT = Five-Year Review Extension
 GEX = Governor's Extension

NSC = Nonsubstantive Rule Change
 R&R = Repeal and Reenact (Proposed Rule)
 REP = Repeal (Proposed Rule)
 5YR = Five-Year Notice of Review and
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Natural Resources, Wildlife Resources	38169	R657-12	AMD	02/10/2014	2014-1/52
<u>wildlife laws</u>					
Natural Resources, Wildlife Resources	38167	R657-13	AMD	02/10/2014	2014-1/54
<u>wildlife permits</u>					
Natural Resources, Wildlife Resources	38171	R657-41	AMD	02/10/2014	2014-1/68
<u>workers' compensation</u>					
Labor Commission, Adjudication	38193	R602-2-5	AMD	02/21/2014	2014-2/7
<u>x-rays</u>					
Environmental Quality, Radiation Control	38146	R313-70-5	AMD	02/18/2014	2013-23/22