

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 June 2014 Medicaid Rate Changes

Effective June 1, 2014, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. 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

Outpatient Hospital Supplemental Payments

The Division of Medicaid and Health Financing (DMHF) is submitting a change to the Medicaid State Plan through Attachments 4.19-B, SPA 14-032-UT Outpatient Hospital Supplemental Payments. The purpose of this change is to update the utilization trend for fiscal year 2015.

DMHF does not expect any increase or decrease in annual costs to result from this amendment.

The proposed effective date of this amendment is July 1, 2014, and it is pending Centers for Medicare and Medicaid Services approval.

A copy of this 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 this change are also available at local county health department offices.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 16, 2014, 12:00 a.m., and May 01, 2014, 11:59 p.m. are included in this, the May 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 June 16, 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 September 12, 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, Finance
R25-7
Travel-Related Reimbursements for
State Employees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38471

FILED: 04/30/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of an increase in lodging rates of many Utah hotels, the Division has determined that reimbursement rates for lodging should also increase for in-state travel. Also, the definition of "continental breakfast" was added to the rule.

SUMMARY OF THE RULE OR CHANGE: The rule increases reimbursement rates for in-state lodging.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will potentially be an increased cost to the state as some lodging reimbursements are increasing. However, The Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.

◆ **SMALL BUSINESSES:** Small businesses may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of individuals eligible for reimbursement for in-state lodging.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursement will see an increase in their reimbursement amount for in-state lodging. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates for in-state lodging and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance

Director and believe these changes are reasonable and warranted. Small business may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

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

ADMINISTRATIVE SERVICES
 FINANCE
 ROOM 2110 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:

◆ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-7. Travel-Related Reimbursements for State Employees.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FIS - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$39.00 and is computed according to the rates listed in the following table.

.....

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

.....

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Baltimore, and Arlington), the traveler may choose to accept the per

diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$62 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the \$62 premium allowance as follows:

(i) If breakfast is provided deduct \$14, leaving a premium allowance for lunch and dinner of actual up to \$48.

(ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$43.

(iii) If dinner is provided deduct \$29, leaving a premium allowance for breakfast and lunch of actual up to \$33.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

.....

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

.....

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 7 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5
Cities with Differing Rates

Blanding	\$75.00 plus tax
Bryce	\$70.00 plus tax
Cedar City	\$75.00 plus tax
Delta	\$70.00 plus tax
Ephraim	\$70.00 plus tax
Fillmore	\$75.00 plus tax
Green River	\$75.00 plus tax
Kanab	\$75.00 plus tax
Layton	\$75.00 plus tax
Logan	\$75.00 plus tax
Moab	\$95.00 plus tax
Monticello	\$70.00 plus tax
Nephi	\$70.00 plus tax
Ogden	\$75.00 plus tax
Panguitch	\$70.00 plus tax
Park City/Heber City/Midway	\$90.00 plus tax
Price	\$75.00 plus tax
Provo/Orem/Lehi/ American Fork/Springville	\$75.00 plus tax
Richfield	\$70.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville),	

Tooele	\$95.00 plus tax
St. George/Washington/Springdale	\$80.00 plus tax
Torrey	\$75.00 plus tax
Tremonton	\$90.00 plus tax
Vernal/Roosevelt/Ballard	\$95.00 plus tax
All Other Utah Cities	\$65.00 plus tax
Blanding	\$75.00 plus tax
Bluff	\$80.00 plus tax
Brigham City	\$75.00 plus tax
Bryce Canyon City	\$75.00 plus tax
Cedar City	\$75.00 plus tax
Ephraim	\$75.00 plus tax
Fillmore	\$75.00 plus tax
Green River	\$80.00 plus tax
Kanab	\$80.00 plus tax
Layton	\$80.00 plus tax
Logan	\$80.00 plus tax
Moab	\$100.00 plus tax
Monticello	\$75.00 plus tax
Ogden	\$80.00 plus tax
Park City/Heber City/Midway	\$90.00 plus tax
Price	\$75.00 plus tax
Provo/Orem/Lehi/ American Fork/Springville	\$85.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax
St. George/Washington/Springdale	\$80.00 plus tax
Torrey	\$75.00 plus tax
Tremonton	\$90.00 plus tax
Vernal/Roosevelt/Ballard	\$95.00 plus tax
All Other Utah Cities	\$70.00 plus tax

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the

department/traveler makes reservations through the State Travel Office.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to \$2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

- (b) Only one change fee per trip will be reimbursed.
- (c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.
- (d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.
 - (2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.
 - (a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the economy lot parking rate at the airport they are flying out of.
 - (b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.
 - (c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.
 - (3) Travelers may use private vehicles with approval from the Department Director or designee.
 - (a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.
 - (b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 56 cents per mile if a state vehicle is not available to the employee.
 - (i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 56 cents per mile.
 - (ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.
 - (c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.
 - (d) Exceptions must be approved in writing by the Director of Finance.
 - (e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.
 - (f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.
 - (g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.
 - (h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.
 - (4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

- (a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.
- (b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.
 - (i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.
 - (ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.
 - (iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.
 - (iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.
 - (c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.
 - (d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.
 - (5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.
 - (a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.
 - (b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.
 - (c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.
 - (i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.
 - (ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.
 - (iii) The traveler will be reimbursed the actual rate charged by the rental agency.
 - (iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.
 - (6) Travel by private airplane must be approved in advance by the Department Director or designee.
 - (a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.
 - (b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.
 - (c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to

cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at 56 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

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

Notice of Continuation: April 15, 2013

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Commerce, Occupational and
Professional Licensing
R156-24b
Physical Therapy Practice Act Rule

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38473

FILED: 05/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Physical Therapy Licensing Board are proposing amendments to: 1) allow individuals who graduated from a physical therapy program and failed the national licensure exam the opportunity to apply for licensure as a physical therapist assistant. They would then be eligible to sit for that exam and potentially have a source of income as a licensed professional as a physical therapist assistant while waiting the obligatory three months to retake the national physical therapist exam; 2) delete the requirement in rule to pass an open-book, take-home test since it is redundant. This requirement is already provided in Subsection 58-24b-302(1)(d); 3) the Physical Therapy Practice Act and this rule are inconsistent in the delineation of requirements for testing for licensure. The practice act states that after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency, the applicant will pass a licensing examination. The current rule indicates that an applicant is eligible to sit for the required examination if they graduate from, or were in the final semester of, a CAPTE (Commission on Accreditation in Physical Therapy Education)-accredited program. In addition to clearing up the

inconsistency, the proposed amendments will eliminate the extra work and long processing times inherent in what has become the Division's role as the de facto physical therapy testing approval service for the United States. The Division has been inundated with applications for licensure from individuals across the country, who want to test before they graduate, who have no desire or intention to become licensed in Utah. After these individuals pass the test, letters are sent requesting transcripts and other needed documentation for licensure. Letters were ignored and applications languished, up to a year, while staff performed due diligence attempting to obtain the requested information necessary for licensure; and 4) the Physical Therapy Licensing Board felt that the temporary license requirement of having a new graduate submit evidence of employment in order to obtain a temporary license was restrictive and counterproductive. The applicant could not find employment without at least a temporary license; yet without a license, the employer was reluctant to make a job offer.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-24b-302a(4) is added to allow an applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT (Federation of State Licensing Boards of Physical Therapy) exam to apply for licensure as a physical therapist assistant. Amendments to Subsection R156-24b-302b(1) mirror the language in statute requiring proof of graduation from an accredited program prior to taking and passing the FSBPT exam. Subsection R156-24b-302b(2) requiring passing the open book, take-home law and rule examination is deleted. Subsection R156-24b-302b(3) allowing an individual enrolled in the final semester of a CAPTE-accredited program to be eligible to sit for the FSBPT exam, is deleted. A new Subsection R156-24b-302b(2) is added to allow an individual who fails the FSBPT national exam to apply for licensure as a physical therapist assistant and sit for that exam. Subsection R156-24b-305(1)(c) is amended to remove the requirement to submit evidence of having secured employment prior to being issued a temporary license. This subsection also reiterates the need for direct supervision if the individual with a temporary license is employed as a physical therapist.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-24b-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. The Division may or may not experience cost reduction due to no longer processing and following up on applications submitted by individuals who desire to test prior to graduation, yet have no intention of being licensed in Utah. The Division may receive an increased number of applications for licensure as a physical therapist assistant.

However, the Division is unable to quantify these potential costs or cost savings.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. The proposed amendments allow individuals who failed the FSBPT Physical Therapist examination to apply for licensure as a physical therapist assistant, sit for that exam, and potentially be gainfully employed while waiting the required three months to retake the FSBPT Physical Therapist examination. Individuals who were only interested in testing prior to graduation will actually save money because they had to apply for licensure in Utah to be made eligible for testing. Upon passing the examination, they then had to apply to their chosen state for licensure, incurring additional applications costs. The Division is unable to quantify these potential costs or costs savings due to a wide range of circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. The proposed amendments allow individuals who failed the FSBPT Physical Therapist examination to apply for licensure as a physical therapist assistant, sit for that exam, and potentially be gainfully employed while waiting the required three months to retake the FSBPT Physical Therapist examination. Individuals who were only interested in testing prior to graduation will actually save money because they had to apply for licensure in Utah to be made eligible for testing. Upon passing the examination, they then had to apply to their chosen state for licensure, incurring additional applications costs. The Division is unable to quantify these potential costs or costs savings due to a wide range of circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing simplifies and clarifies licensing processes within the physical therapy profession. Where businesses are not required to obtain a license under these rules, no fiscal impact to businesses is anticipated.

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 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/19/2014 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-24b. Physical Therapy Practice Act Rule.

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

- (a) an associates, bachelors, or masters program; or
- (b) in accordance with Section 58-1-302, an applicant for

a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a

credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

(4) An applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT National Physical Therapy Examination-Physical Therapist may apply for licensure as a physical therapist assistant.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT, after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency.

~~(2) [In accordance with Section 58-1-309 and Subsections 58-24b-302(1)(d), (2)(d) and (3)(d), each applicant for licensure as a physical therapist or physical therapist assistant, including endorsement applicants, shall pass all questions on the open book, take home Utah Physical Therapy Law and Rule Examination.~~

~~(3) An applicant for licensure as a physical therapist or a physical therapist assistant must have completed the education requirements set forth in Section R156-24b-302, or be enrolled in the final semester of a CAPTE accredited program, in order to be eligible to sit for the examination required for Utah licensure as set forth in Subsection (1) above.]~~An applicant for licensure as a physical therapist who fails the FSBPT National Physical Therapy Examination-Physical Therapist is eligible to sit for the FSBPT National Physical Therapy Examination-Physical Therapist Assistant after submitting an application for licensure as a Physical Therapist Assistant.

R156-24b-305. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary physical therapist or temporary physical therapist assistant license to a person who meets all qualifications for licensure as a physical therapist or physical therapist assistant except for the passing of the required examination, if the applicant:

(a) submits a complete application for licensure as a physical therapist or physical therapist assistant except the passing of the NPTE examination;

(b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;

~~(c) [submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment] is under the direct, on-site supervision of a physical therapist with an active, non-temporary license if employed as a physical therapist; and~~

(d) has registered to take the required licensure examination.

(2) A temporary physical therapist or temporary physical therapist assistant license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed the examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section cannot be renewed or extended.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

Date of Enactment or Last Substantive Amendment: ~~June 10, 2013~~2014

Notice of Continuation: November 15, 2011

Authorizing, and Implemented or Interpreted Law: 58-24b-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and
Professional Licensing

R156-31b

Nurse Practice Act Rule

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38475

FILED: 05/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Board of Nursing are proposing a repeal and reenactment to this rule. The purpose of this rule filing is to: 1) reorganize the rule and clean up existing language for improved reader accessibility; 2) eliminate Board approval of prelicensing education programs that are accredited by recognized accrediting institutions; 3) establish a process by which an educational institution that is seeking accreditation may be approved for a limited time, they only have to achieve applicant or candidate status; 4) clarify rules

governing the examination requirements for licensure; 5) clarify rules regarding the fingerprint background check required for licensure; 6) increase the fines that may be imposed for unprofessional conduct; and 7) clarify medication aide certified (MAC) faculty, supervision, and testing requirements.

SUMMARY OF THE RULE OR CHANGE: The rule is reorganized and renumbered to make it easier to read and research. Existing provisions requiring Board approval of prelicensing education courses are amended to exempt accredited course programs from the Board review process. In response to H.B. 51 (2013 General Legislative Session), a new section is added to create a process by which an educational institution that is seeking accreditation may be approved by the Board for a limited time. Existing provisions regarding license examinations are amended to establish the number of times (unlimited for five years) an applicant may attempt to pass an examination before being required to retake the prelicensing education. Existing provisions regarding the fingerprint background check required for licensure are amended to establish that the background report is only valid for a specific application. Existing provisions establishing fines for unprofessional conduct are revised per the recommendation of the Utah Nursing Board. The following provisions are repealed and are either not included in the reenacted rule or the substance of the repealed rule is parceled out to new sections of the reenacted rule: Subsections R156-31b-102(1), (2), (10), (22), (31), (33), (34), and (42) were related to nursing education program requirements and repealed subsequent to H.B. 51. Subsection R156-31b-102(16), Diabetes medical management plan (DMMP), is simply a part of the individualized healthcare plan (IHP), and Subsection R156-31b-102(19) in the new rule. In Subsection R156-31b-102(17) "Direct supervision" is redundant; supervision is defined in the new Subsection R156-31b-102 (35). In Subsection R156-31b-102(19), "Equivalent to an approved practical nursing education program" is redundant; the information is contained in the new Subsection R156-31b-102(20), "Licensure by equivalency"; and Section R156-31b-301a, Licensed Practical Nurse (LPN) License. Section R156-31b-202, Advisory Peer Committee created -- Membership -- Duties: Subsections R156-31b-202(2)(b) and (c) were related to nursing education programs and removed subsequent to H.B. 51. Section R156-31b-302a, Qualifications for Licensure -- Education Requirements, is replaced by Section R156-31b-301a, LPN License -- Education, Examination, and Experience Requirements; and Section R156-31b-301d, Foreign Education Programs. Section R156-31b-302b, Qualifications for Licensure -- Experience Requirements for Advanced Practice Registered Nurses (APRNs) Specializing in Psychiatric Mental Health Nursing, is replaced by Section R156-31b-301c, APRN License -- Education, Examination, and Experience Requirements. Section R156-31b-302c, Qualifications for Licensure -- Examination Requirements, is replaced by Section R156-31b-301e, Examination Requirements; and Section R156-31b-301c, APRN License -- Education,

Examination, and Experience Requirements. Section R156-31b-302d, Qualifications for Licensure -- Criminal Background Checks, is replaced by Section R156-31b-301a, LPN License -- Education, Examination, and Experience Requirements; Section R156-31b-301b, Registered Nurse (RN) License -- Education, Examination, and Experience Requirements; Section R156-31b-301c, APRN License -- Education, Examination, and Experience Requirements; and Section R156-31b-301g, Criminal Background Checks. Section R156-31b-304, Temporary Licensure, was not replaced. The foreign credentials evaluation process was significantly different in the past, necessitating a temporary license classification. Currently, once the education and credentials evaluations have been completed and the Division receives the report, and if the educational qualifications have been met, the applicant is immediately made eligible to take the National Council Licensure Examination of the National Council of State Boards of Nursing (NCLEX) licensing exam. There is no longer any lag time that would require a temporary license. Section R156-31b-306, Inactive Licensure, Reinstatement or Relicensure, is replaced by Section R156-31b-301a, LPN License -- Education, Examination, and Experience Requirements; Section R156-31b-301b, RN License -- Education, Examination, and Experience Requirements; and Section R156-31b-301c, APRN License -- Education, Examination, and Experience Requirements. Section R156-31b-307, Reinstatement of Licensure, is replaced by Section R156-31b-301a, LPN License -- Education, Examination, and Experience Requirements; Section R156-31b-301b, RN License -- Education, Examination, and Experience Requirements; Section R156-31b-301c, APRN License -- Education, Examination, and Experience Requirements; and Section R156-31b-301f, Licensing Fees. Subsection R156-31b-307(2) was deleted because the Division does not have the authority to waive the licensing fee. Section R156-31b-308, Exemption from Licensure, is redundant and addressed in Subsection 58-31b-308(1)(a), and not replaced. Section R156-31b-310, Licensure by Endorsement, is replaced by Section R156-31b-301a, LPN License -- Education, Examination, and Experience Requirements; Section R156-31b-301b, RN License -- Education, Examination, and Experience Requirements; Section R156-31b-301c, APRN License -- Education, Examination, and Experience Requirements; and Section R156-31b-301e, Examination Requirements. Section R156-31b-401, Disciplinary Proceedings, is not replaced. These subsections are not necessary in rule. Section R156-31b-601, Standards for Parent Academic Institution Offering Nursing Education Program, is not replaced, subsequent to H.B. 51. Section R156-31b-602, Categories of Nursing Education Programs Approval Status, is replaced with Section R156-31b-602, Requirements for Limited-time Approval of Non-accredited Nursing Education Programs, necessitated by H.B. 51. Section R156-31b-603, Nursing Education Program Standards, is replaced with Section R156-31b-603, Education Providers -- Requirements for Ongoing Communication with the Board, necessitated by H.B. 51. Section R156-31b-604, Nursing Education Program -- Disciplinary Action, is not

replaced, subsequent to H.B. 51. Section R156-31b-605, Nursing Education Program Notification of Change, is not replaced, subsequent to H.B. 51. Section R156-31b-606, Nursing Education Program Surveys, is not replaced, subsequent to H.B. 51. Section R156-31b-607, Innovative Approaches in Nursing Education Program, is not replaced, subsequent to H.B. 51. Section R156-31b-608, Approved Nursing Education Programs Located Outside of Utah, is replaced by Section R156-31b-301a, LPN License -- Education, Examination, and Experience Requirements; R156-31b-301b, RN License -- Educations, Examination, and Experience Requirements; and Section R156-31b-301c, APRN License -- Education, Examination, and Experience Requirements. In Section R156-31b-609, Standards for Out-of-State Programs Providing Clinical Experiences in Utah, a significant portion of this section was redundant or no longer necessary subsequent to H.B. 51. This section maintains the same title and similar content, yet is noticeably more concise. Section R156-31b-701, Delegation of Nursing Tasks, is replaced by Section R156-31b-701, Delegation of Nursing Tasks in a Non-school Setting, with the same content in a more concise format. Section R156-31b-702, Scope of Practice, is replaced by Section R156-31b-703b, Scope of Nursing Practice Implementation. Section R156-31b-703, Generally Recognized Scope of Practice of an LPN, is replaced by Section R156-31b-703b, Scope of Nursing Practice Implementation. Section R156-31b-704, Generally Recognized Scope of Practice of an RN, is replaced by Section R156-31b-703b, Scope of Nursing Practice Implementation. The following provisions are new in the reenacted rule: Section R156-31b-102, Definitions, new definitions for "accreditation", "Accreditation Commission for Education in Nursing, Inc." (ACEN), "administering", "delegate" and "foreign nurse education program" are added. In Section R156-31b-201, Board of Nursing -- Membership, amendments now require one licensed practical nurse, at least two advanced practice registered nurses, at least one of whom is an advanced practice registered nurse with registered nurse anesthetist certification (APRN-CRNA), at least four RNs, two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and two public members. These changes ensure representation of certified registered nurse anesthetist (CRNAs) on the Board; expand the pool of licensees involved in education who may serve on the Board due to the fact that educators increasingly earn Doctor of Nursing Practice (DNPs) (APRN licenses) instead of Doctor of Philosophy (PhDs) (RN licenses)--the repealed rule only allowed RNs involved in education to serve on the Board; and clarify that two public members serve on the Board. In Subsection R156-31b-202(2)(b), Advisory Peer Education Committee created -- Membership -- Duties, monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and (2) (c) advise the division as to nursing education issues. These changes reflect H.B. 51 and the elimination of Board oversight of nursing education programs other than nascent programs that have not yet achieved applicant or candidate status. In Subsection R156-31b-301a(3), LPN License --

Education, Examination, and Experience Requirements, an applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah. This is a change in compact requirements, allowing 90 days instead of 30 days for licensure. Thirty days was not a realistic time frame in which to complete the licensing process in most states. In Subsection R156-31b-301b(3), RN License -- Education, Examination, and Experience Requirements, an applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah. This is a change in compact requirements, allowing 90 days instead of 30 days for licensure. Thirty days was not a realistic time frame in which to complete the licensing process in most states. Added Subsection R156-31b-301c(2), APRN License -- Education, Examination, and Experience Requirements, which outlines requirements for APRN specializing in psychiatric mental health nursing. Passing the certification exam prior to beginning supervised clinical practice, a new requirement, ensures a minimum level of competency, necessary to establish prior to a graduate beginning clinical practice. In addition, employers in the state seldom hire a psychiatric/mental health graduate APRN who has not passed the certification exam. The Board of Nursing felt that five years was a generous time period during which a graduate could obtain the needed additional 3,000 hours of mental health clinical practice. The repealed rule had no time frame requirement. In this section, the requirements for one hour of face-to-face supervision and the necessity of obtaining clinical practice hours while employed were removed to mirror the supervisory requirements of the other mental health therapy professions, and to reflect the passing of the certification exam prior to beginning supervised clinical practice. In Subsection R156-31b-301c(2)(a)(ii)(B), "mental health therapy practice" is more clear than "mental health therapy", which could be interpreted to mean the APRN is required to obtain 1,000 hours of individual mental health therapy. This section also contains requirements for reinstatement of a license that had been contained in the repealed Section R156-31b-307. Section R156-31b-301d, Foreign Education Programs, contains language that enables the Division to more completely evaluate the education and credentials of graduates of foreign education programs. If an applicant does not meet the requirements of Section 58-31b-601, the applicant needs to complete all three components of the Commission on Graduates of Foreign Nursing Schools (CGFNS) certification process that details the courses taken, the equivalency of the foreign education program with US education programs, certifies the veracity of the nursing program and transcripts, and evaluates English competency. The Board of Nursing, in the interest of public safety, also establishes basic practice requirements for licensure of a graduate of a foreign education program to assist in ensuring a minimum level of clinical competency. In Section R156-31b-301e, Examination Requirements, basic competency and a minimum level of knowledge is demonstrated by an applicant passing the licensure examination. Due to rapid advancements and changes in healthcare, current practice competency is at issue. This section defines a specific time

frame during which an applicant for licensure must pass the applicable licensing examination, "within five years of the applicant's date of graduation from the nurse education program". This time limit is felt to be in the interest of protecting the public. The repealed Section R156-31b-302c, Qualifications for Licensure -- Examination Requirements, provided an applicant "three years from the date of completion or graduation from a nursing education program or four attempts, whichever is later" to pass the examination. This verbiage, in essence, allowed an individual who graduated 20 years ago, but only failed the examination twice, to try to pass the examination in two more attempts. This section also provides the correct name of the NCSBN Medication Aide Certification Examination (MACE), replacing the Utah Medication Aide Certification Examination title, an examination that was never generated. Section R156-31b-301f, Licensing Fees, requires an applicant to pay a non-refundable application fee before the application for licensure will be considered by the Division or Board. Section R156-31b-301g, Criminal Background Checks, replaces Section R156-31b-302d, Qualifications for Licensure -- Criminal Background Checks. According to FBI guidance, a criminal background check is valid for a specific application only. The background check is no longer considered valid for six months. In addition, applications are no longer considered valid for six months. In Section R156-31b-303, LPN, RN, and APRN License Renewal -- Professional Downgrade -- Continuing Education, the first half of this section replaces Section R156-31b-303, Renewal Cycle Procedures, without substantive changes. Subsection R156-31b-303(4) is entirely new and deals with the process a licensee adheres to if a license downgrade is desired. There have been many APRNs and several certified nurse midwives (CNMs) who have been unable to meet continuing education/certification/Drug Enforcement Administration (DEA) requirements who desired to downgrade to an RN. This became problematic because Utah does not allow multiple nursing licenses; the APRN license is essentially a license to function as an LPN, RN, or APRN. The Division devised a system that allows for a license downgrade, under various circumstances, via license surrender and the issuance of a new license. In Section R156-31b-309, APRN Intern License, the only change in this section is a change for the psychiatric mental health APRN intern. The intern license will be issued for three years instead of one year, a more realistic time frame in which to obtain 3,000 hours of supervised clinical practice. Section R156-31b-402, Administrative Penalties, is reorganized according to the sections in rule and statute defining unlawful and unprofessional conduct; clarifies that fines apply to a nurse or a medication aide certified (MAC); increases fines to more appropriately reflect the seriousness of an offense and/or to potentially deter a licensee from engaging in prohibited behavior; and clarifies the actions that could result in assessed fines. The formatting is changed pursuant to Subsection 58-1-502(j), which allows fines to be assessed for the first and second offenses; and Subsection R156-31b-402(2) is added. New subsections include those that hold APRNs accountable for clinical practice are in subsections (i) and (v). Other new subsections include (u),

(z), (oo), and (pp). Section R156-31b-502, Unprofessional Conduct, new subsections include (1)(b), (g), and (h). In Subsection R156-31b-502(2), "nurse" was clarified as "registered nurse", the level of nurse education and licensure consistent with the requirements of and demands on a school nurse. In Section R156-31b-602, Requirements for Limited-time Approval of Non-accredited Nursing Education Programs, the title and entire content of this section is changed to reflect changes in Board oversight of nursing education programs subsequent to H. B. 51. In Section R156-31b-603, Education Providers -- Requirements for Ongoing Communication with the Board, the title and entire content of this section is changed to reflect changes in Board oversight of nursing education programs subsequent to H. B. 51. Section R156-31b-609, Standards for Out-of-State Programs Providing Clinical Experiences in Utah, Subsection (1) is removed subsequent to H. B. 51. Subsection (2) is new and strengthens the requirements for out-of-state programs who desire to place students in Utah clinical settings. Board approval and minimum requirements are necessary for public safety and so that the student will be exempt from licensure pursuant to Section 58-1-307. In Section R156-31b-701, Delegation of Nursing Tasks in a Non-school Setting, this section has title and formatting changes, and clarification of language. However, there are no substantive changes other than subsection (5). Healthcare facilities frequently employ unlicensed assistive personnel who have specific job descriptions unique to the facility, such as a patient care technician. The duties of the patient care technician are not assigned by the nurse, but rather, the facility. Nurses were concerned that they could be cited for delegating tasks to an unlicensed person, to whom they could not legally delegate nursing tasks. On the other hand, the facility needs flexibility in staffing and resource management. This subsection (5) allows the nurse and the facility to work together, without jeopardizing either, for the good of the patient. In Section R156-31b-701a, Delegation of Nursing Tasks in a School Setting, a substantive change is made to subsection (3); it is the same change made in Subsection R156-31b-502(2), "nurse" is replaced with "registered nurse". Another change is clarification of the term "medication", using the term in statute, "routine medication". A change to ensure student safety and avoid adverse outcomes is also made in Subsection (3)(d). The term "correction dosage of insulin" was removed because administering a correction dosage of insulin requires nursing assessment and follow-up and cannot be delegated to an unlicensed person, as noted in Subsection (3)(c). Section R156-31b-703a, Standards of Professional Accountability, is a reformatting of parts of the repealed sections; Section R156-31b-703, Generally Recognized Scope of Practice of an LPN, and Section R156-31b-704, Generally Recognized Scope of Practice of an RN. There are no substantive changes in content. In Section R156-31b-802, Medication Aide Certified -- Approval of Training Programs, substantive changes in this section include relaxing the faculty requirements for MAC instructors and supervision of students, and reducing the instructor-to-student ratio if the instructor is supervising a student who is working one-on-one with the clinical facility's medication nurse.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-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 \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the rules governing the nursing industry. As a result, the proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: Small businesses that provide nursing prelicensing education and have been accredited by a recognized accrediting body should experience reduced compliance costs due to their no longer being required to submit their courses and programs to the Division for Board approval. Education providers whose programs are in the accreditation process will have compliance costs associated with obtaining limited-time approval from the Board. The costs and savings referenced herein will vary among education providers and cannot be estimated by the Division. Any such costs or savings were considered by the Utah Legislature in passing H.B. 51 during the 2013 General Legislative Session, which exempts accredited programs from Board approval and requires unaccredited programs to apply with the Division for limited-time approval.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons who are unable to pass a licensing examination within the deadlines set forth in the rule amendments will incur costs to repeat prelicensing education in order to obtain licensure. Those costs will vary, depending on which educational program a person chooses to complete. A person who is found to have engaged in unprofessional conduct may be fined according to the updated fine schedule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons who are unable to pass a licensing examination within the deadlines set forth in the rule amendments will incur costs to repeat prelicensing education in order to obtain licensure. Those costs will vary, depending on which educational program a person chooses to complete and costs cannot be determined by the Division. A person who is found to have engaged in unprofessional conduct may be fined according to the updated fine schedule. Educational providers who are required to apply with the Division for limited-time course approval will have associated costs. Those costs will vary and cannot be estimated by the Division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing is primarily for the purpose of reorganizing and clarifying the existing rule. In addition, as required by H.B. 51 (2013 General Legislative Session), providers of nursing prelicensing education are

relieved of the requirement to obtain Board approval of their courses and programs if such courses and programs have been accredited by a recognized body. It is anticipated that businesses offering prelicensing education may experience some savings through this reduction in regulation. Otherwise, no fiscal impact to businesses is anticipated.

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 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 06/12/2014 10:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
 R156-31b. Nurse Practice Act Rule.**

~~R156-31b-101. Title.~~

~~————— This rule is known as the "Nurse Practice Act Rule".~~

~~R156-31b-102. Definitions.~~

~~————— In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:~~

~~————— (1) "Academic year", as used in Section R156-31b-601, means three quarters or two semesters or 900 clock hours. A quarter is defined to be equal to ten weeks and a semester is defined to be equal to 14 or 15 weeks.~~

~~————— (2) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the U.S. Department of Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.~~

~~————— (3) "APRN" means an advanced practice registered nurse.~~

~~(4) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.~~

~~(5) "Approved continuing education" in Subsection R156-31b-303(3) means:~~

~~(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;~~

~~(b) nursing education courses taken from an approved education program as defined in Subsection R156-31b-102(6);~~

~~(c) health related course work taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education; and~~

~~(d) training or educational presentations offered by the Division.~~

~~(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program located within the state of Utah which meets the standards established in Sections R156-31b-601, 602 and 603; and any nursing education program located outside of Utah which meets the standards established in Section R156-31b-607.~~

~~(7) "CCNE" means the Commission on Collegiate Nursing Education.~~

~~(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.~~

~~(9) "COA", as used in this rule, means the Council of Accreditation of Nurse Anesthesia Education Programs.~~

~~(10) "Clinical preceptor", as used in Section R156-31b-608, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent Nursing Education Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.~~

~~(11) "Comprehensive nursing assessment", as used in Section R156-31b-704, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient conditions as well as emergent changes in patient's health status; recognizing alterations to previous patient conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.~~

~~(12) "Contact hour" means 60 minutes.~~

~~(13) "Delegatee", as used in Sections R156-31b-701 and 701a, means one or more competent persons receiving a delegation who acts in a complementary role to the delegating nurse, who has been trained appropriately for the task delegated, and whom the delegating nurse authorizes to perform a task that the delegates is not otherwise authorized to perform.~~

~~(14) "Delegation" means transferring to delegates the authority to perform a selected nursing task in a selected situation. The delegating nurse retains accountability for the delegation.~~

~~(15) "Delegator", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.~~

~~(16) "Diabetes medical management plan (DMMP), as used in this rule, means an individualized plan that describes the health care services that the student is to receive at school. The plan is developed and signed by the student's parent or guardian and health care team. It provides the school with information regarding how the student will manage diabetes at school on a daily basis. The DMMP shall be incorporated into and shall become a part of the student's IHP.~~

~~(17) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:~~

~~(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or~~

~~(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to prescribing a prescription drug.~~

~~(18) "Disruptive behavior", as used in this rule, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.~~

~~(19) "Equivalent to an approved practical nursing education program", as used in Subsection 58-31b-302(2)(c), means the applicant for licensure as an LPN by equivalency is currently enrolled in an RN education program with full approval status, and has completed course work which is equivalent to the course work of an NLNAC accredited practical nursing program.~~

~~(20) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.~~

~~(21) "Individualized healthcare plan (IHP), as used in Section R156-31b-701a, means a plan for managing the health needs of a specific student, written and reviewed at least annually by a school nurse. The IHP is developed by a nurse working in a school setting in conjunction with the student and the student's parent or guardian to guide school personnel in the care of a student with medical needs. The plan shall be based on the student's practitioner's orders for the administration of medications or treatments for the student, or the student's DMMP.~~

~~(22) "Innovative approach to nursing education", as used in Section R156-31b-607, means a creative nursing education strategy that departs from the program standards established in Section R156-31b-603 and requires approval from the Division in collaboration with the Board for implementation.~~

~~(23) "Licensure by equivalency" as used in this rule means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.~~

~~(24) "LPN" means a licensed practical nurse.~~

~~(25) "MA-C" means a medication aide - certified.~~

~~(26) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.~~

____ (27) "NLNAC" means the National League for Nursing Accrediting Commission.

____ (28) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

____ (29) "Non-approved education program" means any foreign nurse education program.

____ (30) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

____ (31) "Nurse accredited", as used in this rule, means accreditation issued by NLNAC, CCNE or COA.

____ (32) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

____ (a) advanced practice registered nurse;

____ (b) certified nurse midwife;

____ (c) chiropractic physician;

____ (d) dentist;

____ (e) osteopathic physician;

____ (f) physician assistant;

____ (g) podiatric physician;

____ (h) optometrist;

____ (i) naturopathic physician; or

____ (j) mental health therapist as defined in Subsection 58-60-102(5).

____ (33) "Parent academic institution", as used in this rule, means the educational institution which grants the academic degree or awards the certificate of completion.

____ (34) "Parent nursing education program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

____ (35) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

____ (36) "Patient surrogate", as used in Subsection R156-31b-502(1)(d), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

____ (37) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

____ (38) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

____ (39) "RN" means a registered nurse.

____ (40) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

____ (41) "Supervision", as used in this rule, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

____ (42) "Supervisory clinical faculty", as used in Section R156-31b-608, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical preceptors who provide the actual direct clinical experience.

____ (43) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

____ This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 31b.

R156-31b-104. Organization - Relationship to Rule R156-1.

____ The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Board of Nursing - Membership.

____ In accordance with Subsection 58-31b-201(1), nurses serving as members of the Board shall be:

____ (1) six registered nurses, two of whom are actively involved in nursing education;

____ (2) one licensed practical nurse; and

____ (3) two advanced practice registered nurses.

R156-31b-202. Advisory Peer Committee created - Membership - Duties.

____ (1) In accordance with Subsection 58-1-203(1)(f), there is created the Nursing Education Peer Committee.

____ (2) The duties and responsibilities of the Nursing Education Peer Committee are to:

____ (a) review applications for approval of nursing education programs;

____ (b) advise the Board and Division regarding standards for approval of nursing education programs; and

____ (c) assist the Board and Division to conduct site visits of nursing education programs.

____ (3) The composition of the Nursing Education Peer Committee shall be:

____ (a) five RNs or APRNs actively involved in nursing education; and

____ (b) members of the Board may also serve on this committee.

R156-31b-301. License Classifications - Professional Upgrade.

____ Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. — Qualifications for Licensure — Education Requirements:

In accordance with Sections 58-31b-302(2)(e) and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure as a LPN by equivalency shall submit written verification from a registered nurse education program with full approval status, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs who are not currently licensed in another state shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools for an applicant who is applying for licensure as a registered nurse; or

(b) Foundation for International Services, Inc. for an applicant who is applying for licensure as a licensed practical nurse.

R156-31b-302b. — Qualifications for Licensure — Experience Requirements for APRNs Specializing in Psychiatric Mental Health Nursing:

(1) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice (including mental health therapy):

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing;

(b) The remaining 3,000 hours shall:

(i) include a minimum of 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental therapy services provided;

(ii) be completed while an employee, unless otherwise approved by the Board and Division, under the supervision of an approved supervisor; and

(iii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3).

(c) At least 2,000 hours must be under the supervision of an APRN specializing in psychiatric mental health nursing. An APRN working in collaboration with a licensed mental health therapist may delegate selected clinical experiences to be supervised by that mental health therapist with general supervision by the APRN.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(c) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing in psychiatric mental health nursing under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(4)(g) by demonstrating that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. — Qualifications for Licensure — Examination Requirements:

(1) An applicant for licensure under Title 58, Chapter 31b shall pass the applicable licensure examination within three years from the date of completion or graduation from a nursing education program or four attempts whichever is later. An individual who does not pass the applicable licensure examination within three years of completion or graduation or four attempts is required to complete another approved nursing education program.

(2) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows:

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination;

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with the applicant's educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

(H) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(I) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing; or

(J) Psychiatric and Mental Health Nurse Practitioner (Adult and Family);

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the Oncology Nursing Certification Corporation Advanced Oncology Certified Nurse if taken on or before July 1, 2005;

~~_____ (vi) one of the following examinations administered by the American Association of Critical Care Nurses Certification Corporation Inc.:~~

~~_____ (A) the Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care; or~~

~~_____ (B) the Acute Care Nurse Practitioner Certification;~~

~~_____ (vii) the national certifying examination administered by the American Midwifery Certification Board, Inc.; or~~

~~_____ (viii) the examination of the Council on Certification of Nurse Anesthetists.~~

~~_____ (3) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.~~

~~_____ (4)(a) An applicant for certification as an MA-C shall pass the Utah Medication Aide Certification Examination with a score of 75% or greater; and~~

~~_____ (b) the certification examination must be taken within six months of completion of the approved training program and cannot be taken more than two times without repeating an approved training program.~~

~~_____ (5) The examinations required under this Section are national exams and cannot be challenged before the Division.~~

~~R156-31b-302d. Qualifications for Licensure -- Criminal Background Checks.~~

~~_____ (1) In accordance with Subsection 58-31b-302(5), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:~~

~~_____ (a) a visa issued within six months of making application to Utah; or~~

~~_____ (b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application to Utah.~~

~~_____ (2) A criminal background check conducted during the application process is considered current and acceptable for a period of six months. An application for licensure under Title 58, Chapter 31b and this rule will be valid for a period of six months from the date received by the Division. Thereafter, a new application for licensure with all the required documentation and fees is required.~~

~~R156-31b-303. Renewal Cycle - Procedures.~~

~~_____ (1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308a.~~

~~_____ (2) Renewal procedures shall be in accordance with Section R156-1-308e.~~

~~_____ (3) Each applicant for renewal shall comply with the following continuing competence requirements:~~

~~_____ (a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:~~

~~_____ (i) licensed practice for not less than 400 hours;~~

~~_____ (ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or~~

~~_____ (iii) completion of 30 contact hours of approved continuing education hours.~~

~~_____ (b) An APRN shall complete the following:~~

~~_____ (i) be currently certified or recertified in their specialty area of practice; or~~

~~_____ (ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.~~

~~_____ (c) An MA-C shall complete eight contact hours of approved continuing education related to medications or medication administration during the two years immediately preceding the application for renewal.~~

~~R156-31b-304. Temporary Licensure.~~

~~_____ A temporary license issued in accordance with Section 58-1-303 to a graduate of a foreign nursing education program may be issued for a period of time not to exceed one year from the date of issuance and shall not be renewed or extended.~~

~~R156-31b-306. Inactive Licensure, Reinstatement or Relicensure.~~

~~_____ (1) In accordance with Subsection 58-1-305(1), an individual seeking activation of an inactive RN or LPN license must document current competency to practice as a nurse as defined in Subsection (3) below.~~

~~_____ (2) An individual seeking reinstatement of RN or LPN licensure or relicensure as a RN or LPN in accordance with Subsection R156-1-308g(3)(b), R156-1-308i(3), R156-1-308j(3) and R156-1-308k(2)(c) shall document current competence as defined in Subsection (3) below.~~

~~_____ (3) Documentation of current competency to practice as a nurse is established as follows:~~

~~_____ (a) an individual who has not practiced as a nurse for five years or less must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);~~

~~_____ (b) an individual who has not practiced as a nurse for more than five years but less than eight years must pass the required examinations as defined in Section R156-31b-302e within six months prior to making application for licensure or successfully complete an approved re-entry program;~~

~~_____ (c) an individual who has not practiced as a nurse for more than eight years but less than 10 years must pass the required examinations as defined in Section R156-31b-302e within six months prior to making application for licensure and successfully complete an approved re-entry program;~~

~~_____ (d) an individual who has not practiced as a nurse for 10 years shall repeat an approved nursing education program and pass the required examinations as defined in Section R156-31b-302e within six months prior to making application for licensure.~~

~~_____ (4) To document current competency for activation, reinstatement or relicensure as an APRN, an individual must pass the required examinations as defined in Section R156-31b-302e and be currently certified or recertified in the specialty area.~~

~~R156-31b-307. Reinstatement of Licensure.~~

~~_____ (1) In accordance with Section 58-1-308 and Subsection R156-1-308g(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).~~

~~(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.~~

R156-31b-308. Exemption from Licensure.

~~In accordance with Subsections 58-1-307(1) and 58-31b-308(1)(a), an individual who provides up to 48 consecutive hours of respite care for a family member, with or without compensation, is exempt from licensure.~~

R156-31b-309. Intern Licensure.

~~(1) In accordance with Section 58-31b-306, an intern license shall expire the earlier of:~~

~~(a) 180 days from the date of issuance, unless the applicant is applying for licensure as an APRN specializing in psychiatric mental health nursing, then the intern license shall be issued for a period of one year and can be extended in one year increments not to exceed five years;~~

~~(b) 30 days after notification from the applicant or the examination agency, if the applicant fails the examination; or~~

~~(c) upon issuance of an APRN license.~~

~~(2) Regardless of the provisions of Subsection (1) of this section, the Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.~~

~~(3) It is the professional responsibility of the APRN-Intern to inform the Division of examination results within ten calendar days of receipt and to cause to have the examination agency send the examination results directly to the Division.~~

R156-31b-310. Licensure by Endorsement.

~~(1) In accordance with Section 58-1-302, an individual who moves from a Nurse Licensure Compact party state does not need to hold a current license, but the former home state license must have been in good standing at the time of expiration.~~

~~(2) An individual under Subsection (1) who has not been licensed or practicing nursing for three years or more is required to retake the licensure examination to demonstrate good standing within the profession.~~

~~(3) An applicant for licensure by endorsement must have a current, active license in another state, or pass the required examinations as defined in Section R156-31b-302c, within six months prior to making application for licensure.~~

R156-31b-401. Disciplinary Proceedings.

~~(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.~~

~~(2) A nurse whose license is suspended, may under Subsection 58-31b-401 petition the Division at any time that the licensee can demonstrate that the licensee can resume competent practice.~~

~~(3) An individual who has had any license issued under Title 58, Chapter 31b revoked or surrendered two times or more as a result of unlawful or unprofessional conduct is ineligible to apply for relicensure.~~

R156-31b-402. Administrative Penalties.

~~In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply:~~

~~(1) Using a protected title:~~

~~initial offense: \$100 - \$300~~

~~subsequent offense(s): \$250 - \$500~~

~~(2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:~~

~~initial offense: \$50 - \$250~~

~~subsequent offense(s): \$200 - \$500~~

~~(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without Board approval:~~

~~initial offense: \$1,000 - \$3,000~~

~~subsequent offense(s): \$5,000 - \$10,000~~

~~(4) Practicing or attempting to practice nursing without a license or with a restricted license:~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(5) Impersonating a licensee, or practicing under a false name:~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(6) Knowingly employing an unlicensed person:~~

~~initial offense: \$500 - \$1,000~~

~~subsequent offense(s): \$1,000 - \$5,000~~

~~(7) Knowingly permitting the use of a license by another person:~~

~~initial offense: \$500 - \$1,000~~

~~subsequent offense(s): \$1,000 - \$5,000~~

~~(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(11) Engaging in conduct that results in convictions of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime of moral turpitude or other crime:~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$200 - \$1,000~~

~~(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:~~

- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:~~
- ~~initial offense: \$500 - \$2,000~~
- ~~subsequent offense(s): \$2,000 - \$10,000~~
- ~~(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(20) Failure to safeguard a patient's right to privacy:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(22) Engaging in sexual relations with a patient:~~
- ~~initial offense: \$5,000 - \$10,000~~
- ~~subsequent offense(s): \$10,000~~
- ~~(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:~~
- ~~initial offense: \$200 - \$1,000~~
- ~~subsequent offense(s): \$500 - \$2,000~~
- ~~(24) Unauthorized taking or personal use of nursing supplies from an employer:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(25) Unauthorized taking or personal use of a patient's personal property:~~
- ~~initial offense: \$200 - \$1,000~~
- ~~subsequent offense(s): \$500 - \$2,000~~
- ~~(26) Knowingly entering false or misleading information into a medical record or altering a medical record:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(27) Unlawful or inappropriate delegation of nursing care:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~

- ~~(28) Failure to exercise appropriate supervision:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(30) Failure to file or impeding the filing of required reports:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(31) Breach of confidentiality:~~
- ~~initial offense: \$200 - \$1,000~~
- ~~subsequent offense(s): \$500 - \$2,000~~
- ~~(32) Failure to pay a penalty:~~
- ~~Double the original penalty amount up to \$10,000~~
- ~~(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:~~
- ~~initial offense: \$500 - \$1,000~~
- ~~subsequent offense(s): \$500 - \$2,000~~
- ~~(34) Failure to confine practice within the limits of competency:~~
- ~~initial offense: \$500 - \$1,000~~
- ~~subsequent offense(s): \$500 - \$2,000~~
- ~~(35) Any other conduct which constitutes unprofessional or unlawful conduct:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000~~
- ~~(36) Engaging in a sexual relationship with a patient surrogate:~~
- ~~initial offense: \$1,000 - \$5,000~~
- ~~subsequent offense(s): \$5,000 - \$10,000~~
- ~~(37) Engaging in practice in a disruptive manner:~~
- ~~initial offense: \$100 - \$500~~
- ~~subsequent offense(s): \$200 - \$1,000.~~

R156-31b-502. Unprofessional Conduct.

- ~~(1) "Unprofessional conduct" includes:~~
- ~~(a) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;~~
- ~~(b) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise provided by law;~~
- ~~(c) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:~~
- ~~(i) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;~~
- ~~(ii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;~~
- ~~(iii) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;~~
- ~~(d) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:~~

~~(i) did not result in any form of abuse or exploitation of the surrogate or patient; and~~
~~(ii) did not adversely alter or affect in any way:~~
~~(A) the nurse's professional judgment in treating the patient;~~
~~(B) the nature of the nurse's relationship with the surrogate; or~~
~~(C) the nurse/patient relationship; and~~
~~(c) engaging in disruptive behavior in the practice of nursing.~~
~~(2) In accordance with a prescribing practitioner's order and an HHP, a nurse who follows the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a and delegates or trains an unlicensed assistive personnel to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.~~

~~R156-31b-601. Standards for Parent Academic Institution Offering Nursing Education Program.~~

~~In accordance with Subsection 58-31b-601(2), the minimum standards that a parent academic institution offering a nursing education program must meet to qualify graduates for licensure under this chapter are as follows:~~

- ~~(1) The parent academic institution shall be legally authorized by the State of Utah to provide a program of education beyond secondary education.~~
~~(2) The parent academic institution shall admit as students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate.~~
~~(3) At least 10 percent of the parent academic institution's revenue shall be from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.~~
~~(4) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an LPN shall:~~
~~(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the U.S. Department of Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation; and~~
~~(b) provide not less than one academic year program of study that leads to a certificate or recognized educational credential.~~
~~(5) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an RN shall:~~
~~(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the U.S. Department of Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation; and~~
~~(b) provide or require not less than a two academic year program of study that awards a minimum of an associate degree.~~
~~(6) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a~~

nursing education program leading toward licensure as an APRN or APRN-CRNA shall:

- ~~(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the U.S. Department of Education and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation;~~
~~(b) admit as students, only persons having completed at least an associate degree in nursing or baccalaureate degree in a related discipline; and~~
~~(c) provide or require not less than a two academic year program of study that awards a minimum of a master's degree.~~

~~R156-31b-602. Categories of Nursing Education Programs Approval Status.~~

- ~~(1) Full approval status of a nursing program shall be granted and maintained by adherence to the following:~~
~~(a) current accreditation by the NLNAC, CCNE, or COA; and~~
~~(b) compliance with the standards of the nurse accrediting body under Subsection (1)(a), and the standards established in Sections R156-31b-601 and R156-31b-603, and R156-31b-607 if the program has been approved to conduct an innovative approach to education.~~
~~(2) The Division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:~~
~~(a) is located or available within the state;~~
~~(b) is found to be out of compliance with the established standards for approval or with an approved innovative approach to education to the extent that the ability of the program to competently educate nursing students is impaired; and~~
~~(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.~~
~~(3) The Division may grant provisional approval status to a nursing education program for a period not to exceed two years after the date of the first graduating class, provided the program:~~
~~(a) is located or available within the state;~~
~~(b) is newly organized;~~
~~(c) meets all standards established in Sections R156-31b-601 and R156-31b-603, and R156-31b-607 if the program has been approved to conduct an innovative approach to education; and~~
~~(d) is progressing in a timely manner to qualify for full approval status by obtaining accreditation from a nurse accrediting body.~~
~~(4)(a) A nursing education program seeking accreditation from NLNAC shall demonstrate progression toward accreditation and qualifying for full approval status by becoming a Candidate for Accreditation by the NLNAC no later than six months from the date of the first day a nursing course is offered.~~
~~(b) A program that fails to obtain NLNAC Candidacy Status as required in this Subsection shall:~~
~~(i) immediately cease accepting any new students;~~
~~(ii) the approval status of the program shall be changed to "Probationary" and if the program fails to become a Candidate for NLNAC accreditation within one year from the date of the first day a nursing course is offered, the program shall cease operation at the end of the current academic term such as at the end of the current semester or quarter; and~~

~~(iii) a nursing education program that ceases operation under this Subsection, is eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.~~

~~(5) A nursing education program that has been granted provisional approval status and fails to become accredited by a nurse accrediting body within two years of the first graduating class, shall cease operation at the end of the two year period of time and the academic term, such as a semester or quarter, of that time period.~~

~~(6) After receiving notification from a nurse accrediting body of a failed site visit or denied application for accreditation by the nurse accrediting body, a nursing education program on provisional approval status shall:~~

~~(i) notify the Division and Board within 10 days of being notified of the failed site visit or denied application for accreditation;~~

~~(ii) cease operation at the end of the current academic term; and~~

~~(iii) be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.~~

~~(7)(a) A nursing education program on provisional approval status shall schedule a nurse accreditation site visit no later than one calendar year from the graduation date of the first graduating class.~~

~~(b) A program that fails to schedule a site visit within one year of the first graduating class shall:~~

~~(i) cease to accept any new students;~~

~~(ii) no later than two years after the first graduating class, cease operation; and~~

~~(iii) if ceasing operation under this Subsection, be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.~~

RI56-31b-603. Nursing Education Program Standards.

~~In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter are set forth as follows:~~

~~(1) A nursing education program shall meet the following standards:~~

~~(a) purposes and outcomes shall be consistent with the Nurse Practice Act and Rule and other relevant state statutes;~~

~~(b) purposes and outcomes shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;~~

~~(c) consumer input shall be considered in developing and evaluating the purpose and outcomes of the program;~~

~~(d) the program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;~~

~~(e) the curriculum shall provide diverse, integrated didactic and clinical learning experiences across the lifespan, consistent with program outcomes;~~

~~(f) the faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;~~

~~(g) the nursing program administrator shall be professionally and academically qualified as a registered nurse with institutional authority and administrative responsibility for the program;~~

~~(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;~~

~~(i) fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;~~

~~(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;~~

~~(k) the program shall meet all the criteria established in this rule;~~

~~(l) the program shall be an integral part of a parent academic institution which is accredited by an accrediting body that is recognized by the U.S. Secretary of Education; and~~

~~(m) the program shall require students to obtain general education, pre-requisite, and co-requisites courses from a regionally accredited institution of higher education, or have in place an articulation agreement with a regionally accredited institution of higher education; a current approved program has until January 1, 2010 to come into compliance with this standard.~~

~~(2) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:~~

~~(a) students' achievement of program outcomes;~~

~~(b) evidence of adequate program resources including fiscal, physical, human, clinical and technical learning resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;~~

~~(c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;~~

~~(d) evidence that accurate program information for consumers is readily available;~~

~~(e) evidence that the head of the academic institution and the administration support program outcomes;~~

~~(f) evidence that the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and~~

~~(g) evidence that the academic institution assures security of student information.~~

~~(3) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:~~

~~(a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;~~

~~(b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;~~

~~(c) learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan;~~

~~(d) coursework including, but not limited to:~~

~~(i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;~~

~~(ii) didactic content integrated with supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the life span and in a variety of clinical settings, to include:~~

~~(A) using informatics to communicate, manage knowledge, mitigate error and support decision making;~~

~~(B) employing evidence-based practice to integrate best research with clinical expertise and patient values for optimal care, including skills to identify and apply best practices to nursing care;~~

~~(C) providing patient-centered, culturally competent care:~~

~~(1) respecting patient differences, values, preferences and expressed needs;~~

~~(2) involving patients in decision-making and care management;~~

~~(3) coordinating and managing continuous patient care; and~~

~~(4) promoting healthy lifestyles for patients and populations;~~

~~(D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate patient care and health promotion; and~~

~~(E) participating in quality improvement processes to measure patient outcomes, identify hazards and errors, and develop changes in processes of patient care;~~

~~(c) supervised clinical practice which includes development of skill in making clinical judgments, management and care of groups of patients, experience with interdisciplinary teamwork, working with families in the provision of care, managing crisis situations, and delegation to and supervision of other health care providers:~~

~~(i) clinical experience shall be comprised of sufficient hours, shifts, variety of populations, and hands-on practice to meet these standards, and ensure students' ability to practice at an entry level;~~

~~(ii) no more than 25% of the clinical hours can be obtained in a nursing skills laboratory, or by clinical simulation or virtual clinical excursions;~~

~~(iii) all student clinical experiences, including those with preceptors, shall be supervised by qualified nursing faculty at a ratio of not more than 10 students to one faculty member unless the experience includes students working with preceptors who can be supervised at a ratio of not more than 15 students to one faculty member; and~~

~~(iv) nursing faculty must be on-site with students during all fundamental, medical-surgical and acute care clinical experiences;~~

~~(f)(i) clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has completed didactic and clinical instruction in all foundational courses including introduction to nursing, fundamentals, medical-surgical, obstetrics, and pediatrics. Therefore, clinical preceptors shall not be utilized in LPN nursing programs.~~

~~(ii) a clinical preceptor shall:~~

~~(A) demonstrate competencies related to the area of assigned clinical teaching responsibilities;~~

~~(B) serve as a role model and educator to the student;~~

~~(C) be licensed as a nurse at or above the level for which the student is preparing;~~

~~(D) not be used to replace clinical faculty;~~

~~(F) be provided with a written document defining the functions and responsibilities of the preceptor;~~

~~(G) confer with the clinical faculty member and student for monitoring and evaluating learning experiences, but the clinical faculty member shall retain responsibility for student learning; and~~

~~(H) not supervise more than two students during any one scheduled work time or shift; and~~

~~(g) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the Division.~~

~~(4) Students rights and responsibilities:~~

~~(a) opportunities to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight shall be provided to students;~~

~~(b) all policies shall be written and available to students;~~

~~(c) students shall be required to meet the health standards and criminal background checks as required in Utah;~~

~~(d) students shall receive faculty instruction, advisement and oversight;~~

~~(e) students shall maintain the integrity of their work;~~

~~(f) (i) an applicant accepted into a nursing education program that has received provisional approval status from the Division, must sign a disclaimer form indicating the applicant's knowledge of the provisional approval status of the program, and the lack of a guarantee that the program will achieve national nursing accreditation and full approval status from the Division; and~~

~~(ii) the disclaimer shall also contain a statement regarding the lack of a guarantee that the credit received from the provisionally approved program will be accepted by or transferable to another educational facility; and~~

~~(g) an applicant accepted into a nursing education program or a student of a nursing education program that is on or receives probationary approval status from the Division, must sign a disclaimer form indicating the applicant or student has knowledge of the program's probationary approval status, and the lack of a guarantee that the program will maintain any approval status or will be able to offer the complete program.~~

~~(5) An administrator of a nursing education program shall meet the following requirements:~~

~~(a) a program preparing an individual for licensure as an LPN:~~

~~(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~(ii) have a minimum of an earned graduate degree with a major in nursing, or a baccalaureate degree in nursing and an earned doctoral degree in a related discipline from a nurse accredited education program or regionally accredited institution;~~

~~(iii) have academic preparation in curriculum and instruction;~~

~~(iv) have at least three years of experience teaching in an accredited nursing education program;~~

~~(v) have knowledge of current LPN practice; and~~

~~(vi) have adequate time to fulfill the role and responsibilities of a program administrator;~~

~~(b) a program preparing an individual for licensure as an RN:~~

~~(i) have a current, active, unenumbered RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~(ii)(A) associate degree program: have a minimum of an earned graduate degree with a major in nursing from a nurse-accredited education program;~~

~~(B) baccalaureate degree program: have a minimum of an earned graduate degree in nursing and an earned doctorate in nursing or a related discipline from a nurse-accredited program or regionally-accredited institution;~~

~~(iii) have academic preparation in curriculum and instruction;~~

~~(iv) have at least three years of experience teaching in an accredited nursing education program;~~

~~(v) have knowledge of current RN practice; and~~

~~(vi) have adequate time to fulfill the role and responsibilities of a program administrator;~~

~~(c) a program preparing an individual for licensure as an APRN:~~

~~(i) have a current, active, unenumbered RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~(ii) have a minimum of an earned graduate degree with a major in nursing and an earned doctorate in nursing or a related discipline from a nurse-accredited program or regionally-accredited institution;~~

~~(iii) have academic preparation in curriculum and instruction;~~

~~(iv) have at least three years of experience teaching in an accredited nursing education program;~~

~~(v) have knowledge of current nursing practice;~~

~~(vi) have adequate time to fulfill the role and responsibilities of a program administrator; and~~

~~(v) if the program administrator is not a licensed APRN, then the program must also have a director that meets the qualifications of Subsection (d) below;~~

~~(d) the director of a graduate program preparing an individual for licensure as an APRN shall meet the following requirements:~~

~~(i) have a current, active, unenumbered APRN license or multistate privilege to practice as an APRN in Utah;~~

~~(ii) have a minimum of an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse-accredited program;~~

~~(iii) have educational preparation in curriculum and instruction;~~

~~(iv) have at least three years of experience teaching in an accredited nursing education program;~~

~~(v) have knowledge of current APRN practice; and~~

~~(vi) have adequate time to fulfill the role and responsibilities of a program director.~~

~~(6) The qualifications for nursing faculty who teach didactic, clinical, or in a skills practice laboratory, in a nursing education program shall include:~~

~~(a) a program preparing an individual for licensure as an LPN:~~

~~(i) have a current, active, unenumbered RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~(ii) have a baccalaureate degree in nursing or an earned graduate degree with a major in nursing from a nurse-accredited program, the majority of faculty (at least 51%) shall have an earned graduate degree with a major in nursing from a nurse-accredited program;~~

~~(iii) have at least two years of clinical experience;~~

~~(iv) (A) have educational preparation in curriculum and instruction; or~~

~~(B) have at least three years of experience teaching in an accredited nursing education program; and~~

~~(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;~~

~~(b) a program preparing an individual for licensure as an RN:~~

~~(i) have a current, active, unenumbered RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~(ii) have an earned graduate degree with a major in nursing from a nurse-accredited program or be currently enrolled in a graduate level accredited nursing education program with graduation from the program no later than three years from the date of hire;~~

~~(iii) have at least two years of clinical experience;~~

~~(iv) (A) have educational preparation in curriculum and instruction; or~~

~~(B) have at least three years of experience teaching in an accredited nursing education program; and~~

~~(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;~~

~~(c) a program preparing an individual for licensure as an APRN:~~

~~(i) have a current, active, unenumbered APRN license or multistate privilege to practice nursing in Utah;~~

~~(ii) have an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse-accredited program or regionally-accredited institution; the majority of the faculty shall have an earned doctorate from a regionally-accredited institution;~~

~~(iii) have at least two years of clinical experience practicing as an APRN;~~

~~(iv)(A) have educational preparation in curriculum and instruction; or~~

~~(B) have at least three years of experience teaching in an accredited nursing education program; and~~

~~(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above.~~

~~(7) At the time this Rule becomes effective, any currently employed nursing program administrator or faculty member who does not meet the criteria established in Subsection (5) or (6), shall have until July 1, 2011 to meet the criteria.~~

~~(8) Adjunct clinical faculty, except clinical associates, employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching. A clinical associate is a staff member of a health care facility with an earned graduate degree or a student currently enrolled in a graduate nursing education program, who is~~

given release time from the facility to provide clinical supervision to other students. The clinical associate is supervised by a graduate prepared mentor faculty member.

(9) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(10) A nursing education program preparing graduates for licensure as either an LPN or RN must maintain an average pass rate on the applicable NCLEX examination that is no more than 5% below the national average pass rate for the same time period.

(11) A program that has received full approval status from the Division in collaboration with the Board and is accredited by either CCNE or NLNAC:

(a) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles or over a two year period of time, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation, and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs four times either after four consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after five consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases to operate under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(12) A program that has been granted provisional approval status by the Division in collaboration with the Board, but has not received either CCNE or NLNAC accreditation:

(a) if a low NCLEX pass rate occurs after any one graduation cycle, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles, or a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after four consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of

the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases operation under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(13) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) the curriculum shall be consistent with nationally-recognized APRN roles and specialties and shall include:

(i) graduate level advanced practice nursing core courses including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(ii) coursework focusing on the APRN role and specialty;

(c) dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties;

(d) instructional track/major shall have a minimum of 500 hours of supervised clinical experience directly related to the recognized APRN role and specialty;

(e) specialty tracks that provide care to multiple age groups and care settings shall require additional hours distributed in a manner that represents the populations served;

(f) there shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty;

(g) post-masters nursing students shall complete the requirements of the APRN masters program through a formal graduate level certificate or master level track in the desired role and specialty;

(i) a program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area; and

(ii) post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours; and

(h) a lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or possessing an APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

R156-31b-604. Nursing Education Program -- Disciplinary Action.

(1) The Division, in collaboration with the Board, may conduct an administrative hearing or issue a Memorandum of Understanding and Order placing a nursing program on probationary status for any of the following reasons:

(a) change in nurse accreditation status;

(b) failure to maintain the standards established by the nurse accreditation bodies such as receiving significant deficiencies

during a review as evidenced by conditions being placed on the program;

~~(c) failure to maintain the standards established in this rule;~~

~~(d) pass rate of more than 5% below the national average;~~

~~(e) low graduation rate defined as the percent of first-time, degree-seeking students who graduate longer than 150% of the designated time for graduation;~~

~~(f) sudden, high, or frequent faculty attrition;~~

~~(g) frequent program administrator turnover;~~

~~(h) national certification pass rate less than 80%; and~~

~~(i) implementation of a new education program, or an outreach or satellite nursing education program without prior notification to the Division.~~

~~(2) The Division, in collaboration with the Board, may take any of the following actions upon a nursing education program:~~

~~(a) issue an Order changing the approval status of the program;~~

~~(b) limit or restrict enrollment of new students or require the program to cease accepting new students within a specified timeframe;~~

~~(c) require the program director to meet with the Board or its designee, and present a remediation plan to correct any problems within a specified time frame;~~

~~(d) establish specific criteria that must be met within a specific length of time;~~

~~(e) withdraw approval status; or~~

~~(f) issue a cease and desist Order.~~

~~(3) Any adjudicative proceeding in regards to a nursing education program shall be classified as a formal adjudicative proceeding and shall comply with Title 63G, Chapter 4, the Utah Administrative Procedures Act.~~

~~R156-31b-605. Nursing Education Program Notification of Change.~~

~~(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the Division for approval status at least one year prior to the implementation of the program.~~

~~(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.~~

~~R156-31b-606. Nursing Education Program Surveys.~~

~~(1) The Division shall conduct an annual survey of nursing education programs to monitor compliance with this rule. The survey may include the following:~~

~~(a) a copy of the program's annual report to a nurse-accrediting body;~~

~~(b) a copy of any changes submitted to any nurse-accrediting body; and~~

~~(c) a copy of any accreditation self study summary report.~~

~~(2) Programs which have been granted provisional approval status shall submit to the Division a copy of all correspondence between the program and the nurse-accrediting body within 10 days of receipt or submission.~~

~~R156-31b-607. Innovative Approaches in Nursing Education Program.~~

~~An approved nursing education program may request a waiver from one or more of the standards established in Section R156-31b-603 in order to implement an innovative approach to nursing education.~~

~~(1) To be eligible to request a waiver from the education standards in Section R156-31b-603, a nursing education program shall:~~

~~(a) have full or provisional approval status from the Division in collaboration with the Board to offer a nursing education program and be accredited by a nurse-accrediting body;~~

~~(b) have had no substantiated complaints in the two years immediately preceding the request for a waiver; and~~

~~(c) have no documented rule violations in the two years immediately preceding the waiver request.~~

~~(2) A written request to implement an innovative approach to nursing education shall be submitted to the Division at least four months prior to the proposed implementation date. The request shall include the following:~~

~~(a) a one-page executive summary;~~

~~(b) identifying information including the name of the nursing education program, responsible party and contact information;~~

~~(c) a brief description of the current program, including the nurse-accrediting body which has accredited the program and the status of that accreditation;~~

~~(d) identification of the standards affected by the proposed innovative approach;~~

~~(e) length of time for which the innovative approach is requested;~~

~~(f) description of the innovative approach including objectives;~~

~~(g) brief explanation of why the program desires to implement an innovative approach at this time;~~

~~(h) explanation of how the proposed innovation differs from approaches in the current program;~~

~~(i) rationale with available evidence supporting the innovative approach;~~

~~(j) identification of resources that support the proposed innovative approach;~~

~~(k) expected impact the innovative approach will have on the program, including administration, students, faculty, and other program resources;~~

~~(l) plan for implementation, including timeline;~~

~~(m) plan for evaluation of the proposed innovation, including measurable criteria/outcomes, method of evaluation, and frequency of evaluation; and~~

~~(n) any additional information requested by the Board.~~

~~(3) The standards for approval of a request to implement an innovative approach are established as follows:~~

~~(a) the innovative approach will not compromise the quality of education or safe practice of students;~~

~~(b) resources are sufficient to support the innovative approach;~~

~~(c) rationale with available evidence supports the implementation of the innovative approach;~~

_____ (d) implementation plan is reasonable to achieve the desired outcomes of the innovative approach;

_____ (e) timeline provides for a sufficient period to implement and evaluate the innovative approach; and

_____ (f) plan for periodic evaluation is comprehensive and supported by appropriate methodology.

_____ (4) The Division in collaboration with the Board may rescind the approval of an innovative approach or may require a nursing education program to make modification to the innovative approach if the Board receives evidence indicating adverse impact, or the nursing program fails to implement the innovative approach as presented and approved.

_____ (5) Periodic evaluation shall be conducted by a nursing program that has implemented an innovative approach. The evaluations shall include:

_____ (a) submitting progress reports conforming to the evaluation plan annually or as requested by the Division or Board;

_____ (b) providing documentation of corrective measures and their effectiveness if any report indicates that students are or were adversely impacted by the innovative approach; and

_____ (c) maintaining their eligibility as outlined in Subsection (1).

_____ (6) The program shall submit a final evaluation report which conforms to the evaluation plan, detailing and analyzing the outcomes data.

_____ (7) If the innovative approach has achieved the desired outcomes and the final evaluation has been submitted, the program may request in writing to have the innovative approach continue, or the program may request to have the innovative approach become an ongoing part of the education program.

_____ (8) A nurse accredited education program based solely on one or more innovative approaches to nursing education may request to be granted provisional approval status by the Division in collaboration with the Board under this section and Sections R156-31b-601 and R156-31b-603.

R156-31b-608. Approved Nursing Education Programs Located Outside of Utah.

_____ (1) In accordance with Section 58-31b-302, an approved nursing education program located outside of Utah must meet the following requirements in order for a graduate to meet the educational requirement for licensure in this state:

_____ (a) be accredited by the CCNE, NLNAC or COA; or

_____ (b) be approved by the Board of Nursing or an equivalent agency in the state in which the nursing education program is offered.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

_____ In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program which is located outside the state must meet to allow students to obtain clinical experiences in Utah are set forth as follows:

_____ (1) An entry level distance learning nursing education program which leads to licensure utilizing precepted clinical experiences in Utah must meet the following criteria:

_____ (a) parent nursing education program must be Board of Nursing approved in the state of primary location (business), be

nationally accredited by either NLNAC, CCNE, or COA, and must be affiliated with an institution of higher education;

_____ (b) parent nursing education program clinical faculty supervisor must be licensed in Utah or a Compact state;

_____ (c) preceptors within the health care facilities must be licensed in good standing, in Utah or a Compact State;

_____ (d) parent nursing education program must have a contract with the Utah health care facilities that provide the clinical sites; and

_____ (e) parent nursing education program must document compliance with the above stated criteria, along with a request to be approved to have a student who is exempt from licensure under Subsection 58-1-307(e).

_____ (2) A nursing education program located in another state that desires to use Utah health care facilities for clinical experiences for one or more students must meet the following criteria:

_____ (a) be approved by the home state Board of Nursing, be nationally accredited by NLNAC, CCNE, or COA and be affiliated with an institution of higher education;

_____ (b) clinical faculty must be employed by the nursing education program, meet the requirements to be a faculty member as established by the accrediting body and the program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

_____ (c) preceptors within the health care facilities must be licensed, in good standing, in Utah or a Compact state;

_____ (d) have a contract with the Utah health care facilities that provide the clinical sites;

_____ (e) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing; and

_____ (f) document compliance with the above stated criteria, along with a request to be approved to have a student(s) who is exempt from licensure under Subsection 58-1-307(e).

_____ (3) A distance learning didactic nursing education program with a Utah based postsecondary school which provides tutoring services, facilitates clinical site selection, and provides clinical site faculty must meet the following criteria:

_____ (a) parent nursing education program must be approved by the Board of Nursing in the state of primary location (business); be nationally accredited by NLNAC, CCNE, or COA and must be affiliated with an institution of higher education;

_____ (b) a formal contract must be in place between the parent nursing education program and the Utah postsecondary school;

_____ (c) parent nursing education program and Utah postsecondary school must submit an application for program approval status by the Division of Occupational and Professional Licensing in collaboration with the Board of Nursing in Utah, utilizing the parent program's existing curriculum. Approval status is granted to the parent nursing education program, not to the postsecondary school;

_____ (d) clinical faculty must be employed by the parent nursing education program (this can be as a contractual faculty member), meet the requirements to be a faculty member as established by the accrediting body and the parent nursing education program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

~~(e) clinical faculty supervisor(s) located at the parent nurse education program must be licensed, in Utah or a Compact state;~~

~~(f) parent nursing education program shall be responsible for conducting the nursing education program, the program's policies and procedures, and the selection of the students;~~

~~(g) parent nursing education program must have a contract with the Utah health care facilities that provide the clinical sites; and~~

~~(h) the parent nursing education program shall submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing.~~

R156-31b-701. Delegation of Nursing Tasks.

~~In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:~~

~~(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients in all situations. The decision to delegate must be based on careful analysis of the patient's needs and circumstances.~~

~~(2) The licensed nurse who is delegating a nursing task shall:~~

~~(a) verify and evaluate the orders;~~

~~(b) perform a nursing assessment, including an assessment of:~~

~~(i) the patient's nursing care needs including, but not limited to, the complexity and frequency of the nursing care, stability of the patient, and degree of immediate risk to the patient if the task is not carried out;~~

~~(ii) the delegatee's knowledge, skills, and abilities after training has been provided;~~

~~(iii) the nature of the task being delegated including the degree of complexity, irreversibility, predictability of outcome, and potential for harm;~~

~~(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs; and~~

~~(v) the availability of adequate supervision of the delegatee.~~

~~(c) act within the area of the nurse's responsibility;~~

~~(d) act within the nurse's knowledge, skills and ability;~~

~~(e) determine whether the task can be safely performed by a delegatee or whether it requires a licensed health care provider;~~

~~(f) determine that the task being delegated is a task that a reasonable and prudent nurse would find to be within generally accepted nursing practice;~~

~~(g) determine that the task being delegated is an act consistent with the health and safety of the patient;~~

~~(h) verify that the delegatee has the competence to perform the delegated task prior to performing it;~~

~~(i) provide instruction and direction necessary to safely perform the specific task; and~~

~~(j) provide ongoing supervision and evaluation of the delegatee who is performing the task;~~

~~(k) explain the delegation to the delegatee and that the delegated task is limited to the identified patient within the identified time frame;~~

~~(l) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task; and~~

~~(m) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.~~

~~(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.~~

~~(a) The following factors shall be evaluated to determine the level of supervision needed:~~

~~(i) the stability of the condition of the patient;~~

~~(ii) the training, capability, and willingness of the delegatee to perform the delegated task;~~

~~(iii) the nature of the task being delegated; and~~

~~(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.~~

~~(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient shall make supervisory visits at appropriate intervals to:~~

~~(i) evaluate the patient's health status;~~

~~(ii) evaluate the performance of the delegated task;~~

~~(iii) determine whether goals are being met; and~~

~~(iv) determine the appropriateness of continuing delegation of the task.~~

~~(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient situation:~~

~~(a) be considered routine care for the specific patient/client;~~

~~(b) pose little potential hazard for the patient/client;~~

~~(c) be performed with a predictable outcome for the patient/client;~~

~~(d) be administered according to a previously developed plan of care; and~~

~~(e) not inherently involve nursing judgment which cannot be separated from the procedure.~~

~~(5) If the nurse, upon review of the patient's condition, complexity of the task, ability of the proposed delegatee and other criteria as deemed appropriate by the nurse, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.~~

~~(a) A delegatee shall not further delegate to another person the tasks delegated by the delegator; and~~

~~(b) the delegated task may not be expanded by the delegatee without the express permission of the delegator.~~

R156-31b-701a. Delegation of Nursing Tasks in a School Setting.

~~In addition to the delegation rule found in Section R156-31b-701, the delegation of nursing tasks in a school setting is further defined, clarified, or established as follows:~~

~~(1) Any task being delegated by the school nurse shall be identified within a current IHP. The IHP is limited to a specific delegatee for a specific time frame. Any unlicensed person who~~

administers medication to a student as a delegatee of a school nurse, must receive training from a school nurse at least annually.

(2) The action of a medication shall determine if the drug is appropriate to delegate the administration to an unlicensed person. Any medication with known, frequent side effects that can be life threatening shall not be delegated.

(3) Medications that require the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug shall not be administered by an unlicensed person.

(4) A nurse working in a school setting may not delegate the administration of the first dose of a new medication or a dosage change.

(5) A nurse may not delegate the administration of any medication which requires nursing assessment or judgment prior to or immediately after administration.

(6) The routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP:

(a) are not actions that require nursing assessment or judgment prior to administration; and

(b) may be delegated to a delegatee. Insulin and glucagon injections by the delegatee shall only occur when the delegatee has followed the guidelines of the IHP.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as an APRN may practice within the scope of practice of a RN under the APRN license.

(4) An individual licensed in good standing in Utah as either an APRN or a CRNA and residing in this state, may practice as an RN in any Compact state.

R156-31b-703. Generally Recognized Scope of Practice of an LPN.

In accordance with Subsection 58-31b-102(15), the LPN practicing within the generally recognized LPN scope of practice practices as follows:

(1) In demonstrating professional accountability, shall:

(a) practice within the legal boundaries for practical nursing through the scope of practice authorized in statute and rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(d) accept responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a focused nursing assessment;

(b) plan for episodic nursing care;

(c) demonstrate attentiveness and provides patient surveillance and monitoring;

(d) assist in identification of patient needs;

(e) seek clarification of orders when needed;

(f) demonstrate attentiveness and provides observation for signs, symptoms and changes in patient condition;

(g) assist in the evaluation of the impact of nursing care, and contributes to the evaluation of patient care;

(h) recognize patient characteristics that may affect the patient's health status;

(i) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implement appropriate aspects of patient care in a timely manner:

(i) provide assigned and delegated aspects of patient's health care plan;

(ii) implement treatments and procedures; and

(iii) administer medications accurately;

(k) document care provided;

(l) communicate relevant and timely patient information with other health team members including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies;

(iii) significant changes in patient condition; or

(iv) patient needs;

(m) participate in nursing management:

(i) assign nursing activities to other LPNs;

(ii) delegate nursing activities for stable patients to unlicensed assistive personnel;

(iii) observe nursing measures and provide feedback to nursing manager; and

(iv) observe and communicate outcomes of delegated and assigned activities;

(n) take preventive measures to protect patient, others and self;

(o) respect patient's rights, concerns, decisions and dignity;

(p) promote a safe patient environment;

(q) maintain appropriate professional boundaries; and

(r) assume responsibility for own decisions and actions.

(3) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respect patient property and the property of others; and

(c) protect confidential information unless obligated by law to disclose the information.

R156-31b-704. Generally Recognized Scope of Practice of an RN.

In accordance with Subsection 58-31b-102(16), the RN practicing within the generally recognized RN scope of practice practices as follows:

~~(1) In demonstrating professional accountability, shall:~~

- ~~(a) practice within the legal boundaries for nursing through the scope of practice authorized in statute and rule;~~
- ~~(b) demonstrate honesty and integrity in nursing practice;~~
- ~~(c) base professional decisions on nursing knowledge and skills, and the needs of patients;~~
- ~~(d) accept responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and~~
- ~~(e) maintain continued competence through ongoing learning and application of knowledge in the patient's interest.~~

~~(2) In demonstrating the responsibility for nursing practice implementation shall:~~

- ~~(a) conduct a comprehensive nursing assessment;~~
- ~~(b) detect faulty or missing patient information;~~
- ~~(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual and social aspects of the patient's condition;~~
- ~~(d) utilize this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's overall health care plan;~~
- ~~(e) provide appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;~~
- ~~(f) seek clarification of orders when needed;~~
- ~~(g) implement treatments and therapy, including medication administration, delegated medical and independent nursing functions;~~
- ~~(h) obtain orientation/training for competence when encountering new equipment and technology or unfamiliar situations;~~
- ~~(i) demonstrate attentiveness and provides patient surveillance and monitoring;~~
- ~~(j) identify changes in patient's health status and comprehends clinical implications of patient signs, symptoms and changes as part of expected and unexpected patient course or emergent situations;~~
- ~~(k) evaluate the impact of nursing care, the patient's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;~~
- ~~(l) document nursing care;~~
- ~~(m) intervene on behalf of patient when problems are identified and revises care plan as needed;~~
- ~~(n) recognize patient characteristics that may affect the patient's health status; and~~
- ~~(o) take preventive measures to protect patient, others and self.~~

~~(3) In demonstrating the responsibility to act as an advocate for patient shall:~~

- ~~(a) respect the patient's rights, concerns, decisions and dignity;~~
- ~~(b) identify patient needs;~~
- ~~(c) attend to patient concerns or requests;~~
- ~~(d) promote safe patient environment;~~
- ~~(e) communicate patient choices, concerns and special needs with other health team members regarding:~~
 - ~~(i) patient status and progress;~~
 - ~~(ii) patient response or lack of response to therapies; and~~

- ~~(iii) significant changes in patient condition;~~
- ~~(f) maintain appropriate professional boundaries;~~
- ~~(g) maintain patient confidentiality; and~~
- ~~(h) assume responsibility for own decisions and actions.~~

~~(4) In demonstrating the responsibility to organize, manage and supervise the practice of nursing, shall:~~

- ~~(a) assign to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;~~
- ~~(b) delegate to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;~~
- ~~(c) match patient needs with personnel qualifications, available resources and appropriate supervision;~~
- ~~(d) communicate directions and expectations for completion of the delegated activity;~~
- ~~(e) supervise others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;~~
- ~~(f) provide follow-up on problems and intervenes when needed;~~
- ~~(g) evaluate the effectiveness of the delegation or assignment;~~
- ~~(h) intervene when problems are identified and revises plan of care as needed;~~
- ~~(i) retain professional accountability for nursing care as provided;~~
- ~~(j) promote a safe and therapeutic environment by:~~
 - ~~(i) providing appropriate monitoring and surveillance of the care environment;~~
 - ~~(ii) identifying unsafe care situations; and~~
 - ~~(iii) correcting problems or referring problems to appropriate management level when needed; and~~
- ~~(k) teach and counsel patient families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.~~

~~(5) In being a responsible member of an interdisciplinary health care team shall:~~

- ~~(a) function as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient-centered health care plan;~~
- ~~(b) respect patient property, and the property of others; and~~
- ~~(c) protect confidential information.~~

~~(6) In being the chief administrative nurse shall:~~

- ~~(a) assure that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;~~
- ~~(b) assure that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;~~
- ~~(c) assure that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and~~

~~(d) assure that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.~~

~~(7) When functioning in a nursing program educator (faculty) role shall:~~

~~(a) teach current theory, principles of nursing practice and nursing management;~~

~~(b) provide content and clinical experiences for students consistent with statutes and rule;~~

~~(c) supervise students in the provision of nursing services; and~~

~~(d) evaluate student scholastic and clinical performance with expected program outcomes.~~

R156-31b-801. Medication Aide – Certified – Formulary and Protocols.

~~In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MA-C to administer routine medications are as follows:~~

~~(1) Under the supervision of a licensed nurse as defined in Subsection R156-31b-102(41), an MA-C may:~~

~~(a) administer medication:~~

~~(i) via approved routes as listed in Subsection 58-31b-102(17)(b);~~

~~(ii) that includes turning oxygen on and off at a predetermined, established flow rate; and~~

~~(iii) that is prescribed as PRN (as needed), if expressly instructed to do so by the nurse, or the medication is an over-the-counter medication;~~

~~(b) destroy medications per facility policy;~~

~~(c) assist a patient with self administration; and~~

~~(d) account for controlled substances with another MA-C or nurse.~~

~~(2) An MA-C shall not administer medications via the following routes:~~

~~(a) central lines;~~

~~(b) colostomy;~~

~~(c) intramuscular;~~

~~(d) subcutaneous;~~

~~(e) intrathecal;~~

~~(f) intravenous;~~

~~(g) nasogastric;~~

~~(h) nonmetered inhaler;~~

~~(i) intradermal;~~

~~(j) urethral;~~

~~(k) epidural;~~

~~(l) endotracheal; or~~

~~(m) gastrostomy or jejunostomy tubes.~~

~~(3) An MA-C shall not administer the following kinds of medications:~~

~~(a) barium and other diagnostic contrast;~~

~~(b) chemotherapeutic agents except oral maintenance chemotherapy;~~

~~(c) medication pumps including client controlled analgesia; and~~

~~(d) nitroglycerin paste.~~

~~(4) An MA-C shall not:~~

~~(a) administer any medication which requires nursing assessment or judgment prior to administration, on-going evaluation, or follow-up;~~

~~(b) receive written or verbal orders;~~

~~(c) transcribe orders from the medical record;~~

~~(d) conduct patient or resident assessments or evaluations;~~

~~(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the nurse;~~

~~(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;~~

~~(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the nurse; and~~

~~(h) account for controlled substances, unless assisted by another MA-C or a nurse.~~

~~(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate the administration of medications to a specific patient or in a specific situation.~~

~~(6) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MA-Cs per shift.~~

~~(7) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise up to and including four MA-Cs per shift.~~

R156-31b-802. Medication Aide – Certified – Approval of Training Programs.

~~In accordance with Subsection 58-31b-601(3), the minimum standards for an MA-C training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows:~~

~~(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to implementing the program.~~

~~(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.~~

~~(3) The program shall consist of a minimum of 60 clock hours of didactic (classroom) training which is consistent with the model curriculum in Section R156-31b-803, and at least 40 hours of practical training within a long-term care facility.~~

~~(4) The classroom instructor shall:~~

~~(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~(b) be a faculty member of an approved nursing education program, or an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nurse Aide Registry; and~~

~~(c) have at least two years of clinical experience and at least one year of experience in long-term care in the past five years.~~

~~(5) The on-site practical training experience instructor shall be available at all times during the practical training experience and shall meet the following criteria:~~

~~(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;~~

~~_____ (b)(i) be a faculty member of an approved nursing education program with at least one year of experience in long-term care nursing; or~~

~~_____ (ii) be an approved CNA instructor who has completed a "Train the Trainer" program recognized by the Utah Nurse Aide Registry, with at least one year of experience in long-term care, and at least three months experience in the specific training facility;~~

~~_____ (c) shall not delegate supervisory responsibilities when providing practical experience training to a student;~~

~~_____ (d) the practical training instructor to student ratio shall be:~~

~~_____ (i) 1:2 if the instructor is working one-on-one with the student to administer the medications; or~~

~~_____ (ii) 1:8 if the instructor is supervising a student who is working one-on-one with the clinical facility's medication nurse.~~

~~_____ (6) An entity desiring to be approved to provide an MA-C training program to qualify a person for certification as a medication aide shall:~~

~~_____ (a) submit to the Division an application form prescribed by the Division;~~

~~_____ (b) provide evidence of adequate and appropriate trainers and resources to provide the training program including a well-stocked clinical skills lab or the equivalent;~~

~~_____ (c) submit a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum in Section R156-31b-803;~~

~~_____ (d) document minimal admission requirements including, but not limited to:~~

~~_____ (i) an earned high school diploma or successful passage of the general educational development (GED) test;~~

~~_____ (ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry, with at least 2,000 hours of experience within the two years prior to application to the training program, working as a certified nurse aide in a long-term care setting; and~~

~~_____ (iii) current cardiopulmonary resuscitation (CPR) certification.~~

~~**R156-31b-803. Medication Aide -- Certified -- Model Curriculum.**~~

~~The model curriculum which must be followed by anyone who desires to offer a medication aide certification program is the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.]~~

~~**R156-31b-101. Title.**~~

~~This rule is known as the "Nurse Practice Act Rule".~~

~~**R156-31b-102. Definitions.**~~

~~In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:~~

~~(1) "Accreditation" means full approval of a nurse prelicensing course of education by one of the following accrediting bodies:~~

~~(a) the ACEN;~~

~~(b) the CCNE; or~~

~~(c) the COA.~~

(2) "ACEN" means the Accreditation Commission for Education in Nursing, Inc.

(3) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(4) "APRN" means advanced practice registered nurse.

(5) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(6) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education; and

(d) training or educational presentations offered by the Division.

(7) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(8) "CCNE" means the Commission on Collegiate Nursing Education.

(9) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(10) "COA" means the Council on Accreditation of Nurse Anesthesia Education Programs.

(11) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(12) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(13) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards

or law, does not require a nursing assessment as defined in Sections R156-31b-102(11) and (17).

(14) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(15) "Delegator" means a person who assigns to another the authority to perform a task on behalf of the person.

(16)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(17) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(18) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(19) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(20) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; or

(b)(i) is currently enrolled in a fully accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program.

(21) "LPN" means licensed practical nurse.

(22) "MAC" means medication aide certified.

(23) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(24) "NLNAC" means the National League for Nursing Accrediting Commission, which as of May 6, 2013, became known as the Accreditation Commission for Education in Nursing, Inc. or ACEN.

(25) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(26) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(27) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a.

(28) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:

(a) an advanced practice registered nurse;

(b) a certified nurse midwife;

(c) a chiropractic physician;

(d) a dentist;

(e) an osteopathic physician;

(f) a physician assistant;

(g) a podiatric physician;

(h) an optometrist;

(i) a naturopathic physician; or

(j) a mental health therapist as defined in Subsection 58-60-102(5).

(29) "Patient" means one or more individuals:

(a) who receive medical and/or nursing care; and

(b) to whom a licensee owes a duty of care.

(30) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

(a) a parent;

(b) a foster parent;

(c) a legal guardian; or

(d) a person legally designated as the patient's attorney-in-fact.

(31) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a nurse specialist or APRN.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(35) "Supervision" is as defined in Subsection R156-1-102a(4).

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b is further defined in Section R156-31b-502.

R156-31b-103. Authority -- Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the to administer Title 58, Chapter 31b.

R156-31b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Board of Nursing -- Membership.

In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:

(1) one licensed practical nurse;

(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;

- _____ (3) four RNs;
- _____ (4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and
- _____ (5) two public members.

R156-31b-202. Advisory Peer Education Committee Created – Membership - Duties.

_____ (1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.

_____ (2) The duties and responsibilities of the Advisory Peer Education Committee are to:

_____ (a) review applications for approval of nursing education programs;

_____ (b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and

_____ (c) advise the Division as to nursing education issues.

_____ (3) The composition of the Advisory Peer Education Committee shall be:

_____ (a) five RNs or APRNs actively involved in nursing education; and

_____ (b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications – Professional Upgrade.

_____ Upon issuance by the Division of an increased scope of practice license:

_____ (1) the increased licensure supersedes the lesser license;

_____ (2) the lesser license is automatically expired; and

_____ (3) the licensee shall immediately destroy any print or physical copy of the lesser license.

R156-31b-301a. LPN License – Education, Examination, and Experience Requirements.

_____ (1) An applicant who has never obtained a license in any state or country shall:

_____ (a) demonstrate that the applicant:

_____ (i) has successfully completed an LPN prelicensing education program that meets the requirements of Section 58-31b-601;

_____ (ii) has successfully completed an LPN prelicensing education program that is equivalent to an approved program under Section 58-31b-601; or

_____ (iii)(A) is enrolled in an RN prelicensing education program that meets the requirements of Section 58-31b-601; and

_____ (B) has completed coursework that is equivalent to the coursework of an ACEN-accredited practical nurse program;

_____ (b) pass the LPN NCLEX examination pursuant to Section R156-31b-301e; and

_____ (c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

_____ (2) An applicant who holds a current LPN license issued by another country or by a state that does not participate in the interstate compact shall:

_____ (a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;

_____ (b) demonstrate that the LPN prelicensing education completed by the applicant:

_____ (i) is equivalent to LPN prelicensing education approved in Utah as of the date of the applicant's graduation; and

_____ (ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

_____ (c) pass the LPN NCLEX examination pursuant to Section R156-31b-301e; and

_____ (d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

_____ (3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah.

_____ (4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

_____ (a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

_____ (b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

_____ (i) pass the LPN NCLEX examination within 60 days following the date of application; or

_____ (ii) successfully complete an approved re-entry program;

_____ (c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

_____ (i) successfully complete an approved re-entry program; and

_____ (ii) pass the LPN NCLEX examination within 60 days following the date of application; or

_____ (d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

_____ (5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

_____ (a) comply with this Subsection (2)(b); and

_____ (b) comply with this Subsection (4) as applicable; and

_____ (c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License – Education, Examination, and Experience Requirements.

_____ (1) An applicant who has never obtained a license in any state or country shall:

_____ (a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

_____ (i) meets the requirements of Section 58-31b-601; or

_____ (ii) is equivalent to an approved program under Section 58-31b-601;

_____ (b) pass the RN NCLEX examination pursuant to Section R156-31b-301e; and

_____ (c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

_____ (2) An applicant who holds a current RN license issued by another country or by a state that does not participate in the interstate compact shall:

_____ (a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

_____ (b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

_____ (ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

_____ (c) pass the RN NCLEX examination pursuant to Section R156-31b-301e; and

_____ (d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

_____ (3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah.

_____ (4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

_____ (a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

_____ (b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

_____ (i) pass the RN NCLEX examination within 60 days following the date of application; or

_____ (ii) successfully complete an approved re-entry program;

_____ (c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

_____ (i) successfully complete an approved re-entry program; and

_____ (ii) pass the RN NCLEX examination within 60 days following the date of application; or

_____ (d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

_____ (5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

_____ (a) comply with this Subsection (2)(b);

_____ (b) comply with this Subsection (4) as applicable; and

_____ (c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.

_____ (1) An applicant who is not currently and validly licensed as an APRN in any state or country shall:

_____ (a) demonstrate that the applicant holds a current, active RN license in good standing;

_____ (b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

_____ (c) pass a national certification examination consistent with the applicant's educational specialty, pursuant to Section R156-31b-301e, and administered by one of the following credentialing bodies:

_____ (i) the American Nurses Credentialing Center Certification;

_____ (ii) the Pediatric Nursing Certification Board;

_____ (iii) the American Association of Nurse Practitioners;

_____ (iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

_____ (v) the American Midwifery Certification Board, Inc.; or

_____ (vi) the Council on Certification of Nurse Anesthetists;

_____ (d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

_____ (e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

_____ (2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

_____ (a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours

of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

_____ (i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

_____ (ii) The remaining 3,000 hours shall:

_____ (A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

_____ (B) include a minimum of 1,000 hours of mental health therapy practice; and

_____ (C) include at least 2,000 clinical practice hours that are completed under the supervision of:

_____ (I) an APRN specializing in psychiatric mental health nursing; or

_____ (II) a licensed mental health therapist who is delegated by the supervising APRN to supervise selected clinical experiences under the general supervision of the supervising APRN; and

_____ (D) unless otherwise approved by the Board and Division, be completed while the individual seeking licensure is under the supervision of an individual who meets the requirements of this Subsection (2)(c).

_____ (b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

_____ (c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

_____ (ii) Duties and responsibilities of a supervisor include:

_____ (A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

_____ (B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

_____ (C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

_____ (3) An applicant who holds a current APRN license issued by another state or country shall:

_____ (a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

_____ (b) demonstrate that the APRN prelicensing education completed by the applicant:

_____ (i) if completed on or after January 1, 1987:

_____ (A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

_____ (B) constitutes a bachelor degree in nursing; and

_____ (ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

_____ (c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

_____ (d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

An applicant whose prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, shall demonstrate:

(1)(a) that all three components of the CGFNS certification process and the credentials evaluation service professional report have been completed so as to demonstrate that the courses completed are substantially equivalent to coursework of approved education programs as of the date of the applicant's graduation;

(b) that at least one of the following practice requirements has been met within the five-year period preceding the date of application:

(i) the applicant has practiced as a licensed nurse for a minimum of 960 hours in a state or territory of the United States;

(ii) the applicant has completed a Board-approved refresher course;

(iii) the applicant has obtained an advanced (master's or doctorate) nursing degree; or

(iv) the applicant has qualified for and obtained a license upgrade (LPN to RN or RN to APRN); and

(c) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application; or

(2)(a) that the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States during the five-year period immediately preceding the date of application; and

(b) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the nurse education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as a MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensure Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) If an intern is applying for licensure as an APRN specializing in psychiatric mental health nursing, the intern license expires three years from the date of issuance.

(4) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-801 and R156-31b-502 and Subsection 58-31b-102(1), and unless otherwise ordered by the presiding officer, the following fine schedule shall apply to a nurse or MAC.

(1) Initial and second offenses.

(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):

initial offense: \$500 - \$4,000

second offense: \$4,000 - \$8,000

(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):

initial offense: \$500 - \$4,000

second offense: \$4,000 - \$8,000

(c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):

initial offense: \$2,000 - \$7,500

second offense: \$7,500 - \$9,500

(d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of

licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify

contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):

initial offense: \$4,000 - \$8,000

second offense: \$8,000 - \$10,000

(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):

initial offense: \$2,000 - \$5,000

second offense: \$5,000 - \$10,000

(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(ff) Failing to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to \$20,000

(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsection 58-31b-502(15):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):

initial offense: \$500 - \$4,000

second offense: \$4,000 - \$8,000

(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):

initial offense: \$250 - \$4,000

second offense: \$4,000 - \$8,000

(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be \$10,000 or \$2,000 per day.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;

(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;

(c) as to an RN or LPN, issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise legally permissible;

(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out;

(ii) that safe and effective nursing care is provided to patients;

(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;

(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nature of the nurse's relationship with the patient;

(f) engaging in disruptive behavior in the practice of nursing;

(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-501(1)(a); and

(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502.

(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.

(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program provider demonstrates that application for accreditation has been made.

(b) If the program provider is seeking accreditation from the ACEN or CCNE, the limited-time approval shall expire after 12 months unless Subsection (2) applies.

(c) If the program provider is seeking accreditation from the COA, the limited-time approval shall expire at the end of the COA initial review process unless this Subsection (2) applies.

(2)(a) A program that is granted limited-time approval pursuant to this Subsection (1) shall retain that approval if, during the applicable time period outlined in Subsection (1):

(i) it achieves candidate status with the ACEN;

(ii) it achieves applicant status with the CCNE; or

(iii) it successfully completes the COA initial review process.

(b) A program that meets the qualifications described in this Subsection (2)(a) shall retain its limited-time approval until such time as the accrediting body makes a final determination on the program's application for accreditation.

(3) The provider of a program that receives limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (4), disclose to each student who enrolls:

(a) that program accreditation is pending;

(b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and

(c) that, if the program fails to achieve accreditation, any student who has not yet graduated will be unable to complete a nurse prelicensing education program through the provider.

(4) The disclosure required by this Subsection (3) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to a final determination by the (accrediting body) will satisfy associated state requirements for licensure. However, if the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will need to transfer into a different program in order to complete your nurse prelicensing education. There is no guarantee that another institution will accept you as a transfer student. If you are accepted, there is no guarantee that the institution you attend will accept the education you have completed at (name of institution providing disclosure) for credit toward graduation."

156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program(s) shall provide to the Board:

(1) by December 31 of each calendar year, a copy of the program's annual report, as provided to the applicable program accrediting body; and

(2) within 30 days of receipt or submission, a copy of any correspondence between the program provider and the accrediting body.

156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to use Utah health care facilities for pre-licensure clinical experiences for one or more students shall, prior to placing a student, meet with the Board and demonstrate to the satisfaction of the Board that the program:

(1) has been approved by the home state Board of Nursing;

(2) has been fully accredited by the ACEN, CCNE, or COA;

(3) has clinical faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing; and

(c) are licensed in good standing in Utah or a Compact state;

(4) is affiliated with an institution of higher education;

(5) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) location, and

(ii) date range; and

(6) has current clinical placement agreements, executed within the prior 12 months, in place at Utah facilities.

156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1)(a) The delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(b) The delegator may not delegate to unlicensed assistive personnel, including a physician's medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.

(c) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances.

(d) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform;

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

(e) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

(ii) provide ongoing appropriate supervision and evaluation of the delegatee who is performing the task;

(iii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame;

(iv) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task;

(v) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee; and

(vi)(A) evaluate the following factors to determine the degree of supervision required to ensure safe care:

(I) the stability and condition of the patient;
(II) the training, capability, and willingness of the delegatee to perform the delegated task;
(III) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;
(IV) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and
(V) any immediate risk to the patient if the task is not carried out; and
(B) ensure that the delegator or another qualified nurse is readily available either in person or by telecommunication to:
(I) evaluate the patient's health status;
(II) evaluate the performance of the delegated task;
(III) determine whether goals are being met; and
(IV) determine the appropriateness of continuing delegation of the task.
(2) Nursing tasks that may be delegated shall meet the following criteria as applied to each specific patient situation:
(a) be considered routine care for the specific patient;
(b) pose little potential hazard for the patient;
(c) be generally expected to produce a predictable outcome for the patient;
(d) be administered according to a previously developed plan of care; and
(e) be limited to those tasks that do not inherently involve nursing judgment that cannot be separated from the procedure.
(3) If the nurse, upon review of the patient's condition, the complexity of the task, the ability of the proposed delegatee, and other criteria established in this Subsection, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.
(4) A delegatee may not:
(a) further delegate to another person any task delegated to the individual by the delegator; or
(b) expand the scope of the delegated task without the express permission of the delegator.
(5) Tasks that, according to the internal policies or practices of a medical facility, are required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:

(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:
(a) develop, in conjunction with the applicable student, parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and
(b) ensure that the IHP is available to school personnel.
(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.
(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering

routine medication(s), as defined in Subsection 58-31b-102(17), to a student.

(b) The training required under this Subsection (3)(a) shall be performed at least annually.

(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:

(i) with known, frequent side effects that can be life threatening;

(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;

(iii) that is being administered as a first dose:

(A) of a new medication; or

(B) after a dosage change; or

(iv) that requires nursing assessment or judgment prior to or immediately after administration.

(d) In addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

(a) conduct a focused nursing assessment;

(b) plan for and implement nursing care within limits of competency;

(c) conduct patient surveillance and monitoring;

(d) assist in identifying patient needs;

(e) assist in evaluating nursing care;

(f) participate in nursing management by:

(i) assigning appropriate nursing activities to other LPNs;

(ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;

(iii) observing nursing measures and providing feedback to nursing managers; and

(iv) observing and communicating outcomes of delegated and assigned tasks; and

(g) serve as faculty in area(s) of competence.

(2) RN. An RN shall be expected to:

(a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:

(i) complete a comprehensive nursing assessment; and

(ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;

(b) detect faulty or missing patient information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;

(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;

(f) correctly identify changes in each patient's health status;

(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;

(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;

(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;

(j) appropriately advocate for patients by:

(i) respecting patients' rights, concerns, decisions, and dignity;

(ii) identifying patient needs;

(iii) attending to patient concerns or requests; and

(iv) promoting a safe and therapeutic environment by:

(A) providing appropriate monitoring and surveillance of the care environment;

(B) identifying unsafe care situations; and

(C) correcting problems or referring problems to appropriate management level when needed;

(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:

(i) delegating tasks in accordance with these rules and applicable statutes; and

(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;

(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;

(n) if acting as a chief administrative nurse:

(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;

(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and

(B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and

(iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;

(o) if employed by a department of health:

(i) implement standing orders and protocols; and

(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;

(p) serve as faculty in area(s) of competence; and

(q) perform any task within the scope of practice of an LPN.

(3) APRN.

(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.

(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN.

(c) An individual licensed in good standing in Utah as an APRN and residing in this state may practice as an RN in any Compact state.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.

(1) Under the supervision of a licensed nurse, an MAC may:

(a) administer over-the-counter medication;

(b) administer prescription medications;

_____ (i) if expressly instructed to do so by the supervising nurse; and

_____ (ii) via approved routes as listed in Subsection 58-31b-102(17)(b);

_____ (c) turn oxygen on and off at a predetermined, established flow rate;

_____ (d) destroy medications per facility policy;

_____ (e) assist a patient with self administration; and

_____ (f) account for controlled substances with another MAC or nurse physically present.

_____ (2) An MAC may not administer medication via the following routes:

_____ (a) central lines;

_____ (b) colostomy;

_____ (c) intramuscular;

_____ (d) subcutaneous;

_____ (e) intrathecal;

_____ (f) intravenous;

_____ (g) nasogastric;

_____ (h) nonmetered inhaler;

_____ (i) intradermal;

_____ (j) urethral;

_____ (k) epidural;

_____ (l) endotracheal; or

_____ (m) gastronomy or jejunostomy tubes.

_____ (3) An MAC may not administer the following kinds of medications:

_____ (a) barium and other diagnostic contrast;

_____ (b) chemotherapeutic agents except oral maintenance chemotherapy;

_____ (c) medication pumps including client controlled analgesia; and

_____ (d) nitroglycerin paste.

_____ (4) An MAC may not:

_____ (a) administer any medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or during follow-up;

_____ (b) receive written or verbal patient orders from a licensed practitioner;

_____ (c) transcribe orders from the medical record;

_____ (d) conduct patient or resident assessments or evaluations;

_____ (e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;

_____ (f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

_____ (g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

_____ (h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

_____ (5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

_____ (6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

_____ (b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified -- Approval of Training Programs.

_____ In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

_____ (1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

_____ (2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

_____ (3) The program shall consist of at least:

_____ (a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

_____ (b) 40 hours of practical training within a long-term care facility.

_____ (4) The classroom instructor shall:

_____ (a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

_____ (ii) have at least one year of clinical experience; or

_____ (b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

_____ (ii) have at least one year of clinical experience.

_____ (5)(a) The on-site practical training experience instructor shall meet the following criteria:

_____ (i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

_____ (B) have at least one year of clinical experience; or

_____ (ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

_____ (B) have at least one year of clinical experience.

_____ (b) The practical training instructor-to-student ratio shall be no greater than:

_____ (i) 1:2 if the instructor is working with individual students to administer medications; or

_____ (ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

_____ (c) The on-site practical training experience instructor shall be on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

_____ (6) An entity seeking approval to provide an MAC training program shall:

_____ (a) submit to the Division a complete application form prescribed by the Division;

_____ (b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed;

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program; and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified -- Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

KEY: licensing, nurses

Date of Enactment or Last Substantive Amendment: [~~July 8, 2010~~2014

Notice of Continuation: March 18, 2013

Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and
Professional Licensing
R156-63a
Security Personnel Licensing Act
Contract Security Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38450

FILED: 04/21/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Security Services Licensing Board are proposing amendments to the rule to delete the requirement for a copy of a driver's license or identification card for all unarmed and armed private security officer applicants, officers, directors, shareholders, and qualifying agents. The application requires providing us with driver's license or identification information, therefore requesting a copy is not necessary. The proposed amendments will also add to the rule a provision regarding interim permits for

private security officers. The proposed amendment would cause the expiration of an interim permit if the applicant's license is denied. This would facilitate the rule becoming consistent with the statutory intent. The proposed amendments also amend the requirements for basic education training which is done prior to licensure for unarmed and armed private security officers. The proposed amendments will allow for 8 of the 24 required training hours to be completed outside the classroom in security subject areas of the instructor's choice. This allows for more flexibility in course content and in the mode of instruction.

SUMMARY OF THE RULE OR CHANGE: In Subsections R156-63a-302a(1)(d) and (2)(d), the amendment deletes the provisions requiring a copy of the driver's license or identification card for unarmed and armed private security officers applicants, qualifying agents, officers, directors, and shareholders. New Subsection R156-63a-302g(2) adds that an interim permit shall automatically expire if an application for licensure is denied. In Subsection R156-63a-602(5), amendments delete the provision requiring direct student-teacher relationship. In Section R156-63a-603, amends the 24-hour requirement to 16 hours of basic classroom instruction which includes a direct student-teacher relationship and adds the provision of an additional 8 elective hours. The 16 basic classroom hours must be in the listed subject areas which were not changed. The number of hours required in each subject area are being deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101 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 \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed unarmed and armed private security officers and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendments in this filing regarding the reduction of classroom training hours may decrease the costs of small business owners that hire instructors and/or provide training to armed and unarmed private security officers due to the eight hours of classroom instruction being removed. The proposed amendments allow for training to be potentially done in two days with the remaining eight hours achieved outside of a classroom setting. However, due to a wide range of circumstances, the Division is not able to determine any exact amount of potential decrease in costs to small businesses. The remaining proposed amendments will not impact costs of small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment in this filing regarding the

reduction of classroom training hours may decrease the financial gain of security associations and companies providing training as a result of requiring fewer hours to be taught in the classroom. The proposed amendments may also decrease the costs for applicants seeking licensure by potentially needing less classroom instruction. However, due to a wide range of circumstances, the Division is not able to determine any exact amount of potential decrease in costs. The remaining proposed amendments will not impact other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments may decrease the costs of applicants for licensure as an unarmed or armed private security officer by potentially not having to pay for up to eight hours of training and/or also allowing for the use of previous certifications. The Division does not anticipate that the remaining proposed amendments will alter compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing reduces the number of classroom instruction hours required for licensure as a security officer. It is possible businesses that offer such instruction will decrease tuition, reduce instructor compensation, and otherwise modify their business operations accordingly. Any attendant fiscal impact will vary among education providers and cannot be estimated. Otherwise, it is not anticipated that this rule filing will have a fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at aprilellis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/12/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 402, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.**

R156-63a-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel]; and

~~(d) a copy of the driver license or identification card issued by a state or territory of the United States or the District of Columbia to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel].~~

(2) An application for licensure as an armed or unarmed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant; and

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety]; and

~~(d) a copy of the driver license or identification card issued by a state or territory of the United States or the District of Columbia to the applicant].~~

(3) Applications for change in licensure classification from unarmed to armed private security officer shall only require the following additional documentation:

(a) the required firearms training pursuant to Section 58-63-604; and

(b) an additional criminal history background check pursuant to Section 58-63-302 and Subsections R156-63a-302a(2).

R156-63a-302g. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Subsection 58-63-310, upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, the Division may immediately issue an interim permit to the applicant if the applicant meets the following criteria:

(1)(a) the applicant submits with the applicant's application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

(2)(b) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(3)(c) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

(2) If an applicant's application is denied, an interim permit under this section shall automatically expire.

R156-63a-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the Division as an approved basic education and training program for armed private security officers and unarmed private security officers, the applicant for program approval shall meet the following standards:

(1) The applicant shall pay a fee for the approval of the education program.

(2) The training method is documented in a written education and training manual which includes training performance objectives and a four hour instructor training program.

(3) The program curriculum for armed private security officers includes content as established in Sections R156-63a-603 and R156-63a-604.

(4) The program for unarmed private security officers includes content as established in Section R156-63a-603.

(5) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, ~~where there is a direct student-teacher relationship~~. All instructors providing the basic classroom instruction shall:

(a) have at least three years of supervisory experience reasonably related to providing contract security services; and

(b) have completed a four hour instructor training program which shall include the following criteria:

- (i) motivation and the learning process;
- (ii) teacher preparation and teaching methods;
- (iii) classroom management;
- (iv) testing; and
- (v) instructional evaluation.

(6) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(8) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(9) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63a-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

(1) An approved basic education and training program for armed and unarmed private security officers shall have ~~the following components~~ at least 24 hours of instruction including:

(a) ~~at least 24 hours of basic classroom instruction including~~ 16 hours of basic classroom instruction in which there is a direct student-teacher relationship that includes all of the following:

(i) ~~one hour covering~~ the nature and role of private security, including:

- (A) the limits of a private security officer's authority;
- (B) the scope of authority of a private security officer;
- (C) the civil liability of a private security officer; and
- (D) the private security officer's role in today's society;

(ii) ~~three hours covering~~ state laws and rules applicable to private security;

(iii) ~~three hours covering~~ the legal responsibilities of private security, including:

- (A) constitutional law;
- (B) search and seizure; and
- (C) other such topics;

(iv) ~~four hours of~~ situational response evaluations, including:

- (A) protecting and securing crime or accident scenes;
- (B) notifying of internal and external agencies; and
- (C) controlling information;
- (v) ~~one hour covering~~ security ethics;

(vi) ~~three hours covering~~ the use of force, emphasizing the de-escalation of force and alternatives to using force;

(vii) ~~two hours covering~~ documentation and report writing, including:

- (A) preparing witness statements;
- (B) performing log maintenance;
- (C) exercising control of information;
- (D) taking field notes;
- (E) organizing information into a report; and
- (F) performing basic writing;

(viii) ~~four hours covering~~ patrol techniques, including:

- (A) mobile patrol verses fixed post;
- (B) accident prevention;
- (C) responding to calls and alarms;
- (D) security breeches; and

(E) monitoring potential safety hazards;
 (ix) ~~[two hours covering]~~ police and community relations, including fundamental duties and personal appearance of security officers;
 (x) ~~[one hour covering]~~ sexual harassment in the work place; and
 (b) eight hours of elective course work as determined by the instructor that may include:
(i) current certification in cardiopulmonary resuscitation (CPR), automated external defibrillator (AED), first aid, or any other recognized basic life saving certification;
(ii) introduction to executive protection;
(iii) basic self-defense;
(iv) driving techniques for the security professional;
(v) escort techniques;
(vi) crowd control;
(vii) access control and the use of electronic detection devices;
(viii) introduction to security's rose with closed-circuit television systems;
(ix) use of defensive items and objects;
(x) management of aggressive behavior, use of force, de-escalation techniques;
(xi) homeland security involving bomb threats and anti-terrorism;
(xii) Americans with Disabilities Act (ADA) compliance; and
(xiii) prior training as evidenced by third-party documentation may be accepted at the trainer's discretion to count towards the eight hours of elective training; and
(c) a final examination that:
(i) competently examines the student on the subjects included in the 16 hours of basic classroom instruction in the approved program of education and training; and
(ii) mandates a minimum pass score of 80%. [
(xi) a final examination which competently examines the student on the subjects included in the 24 hours of basic classroom instruction in the approved program of education and training.
(2) A student may only successfully pass the examination under Subsection (xi) with a minimum score of 80%.]

KEY: licensing, security guards, private security officers
Date of Enactment or Last Substantive Amendment: ~~[October 29, 2013]~~ 2014
Notice of Continuation: September 9, 2013
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101

Commerce, Occupational and
 Professional Licensing
R156-63b
 Security Personnel Licensing Act
 Armored Car Rule

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38474
 FILED: 05/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Security Services Licensing Board are proposing amendments to the rule to delete the requirement for a copy of a driver's license or identification card for all armored car applicants, officers, directors, shareholders, and qualifying agents. The application requires providing us with driver's license or identification information, therefore requesting a copy is not necessary. The proposed amendments will also add to the rule a provision regarding interim permits for armored car security officers. The proposed amendment would cause the expiration of an interim permit if the applicant's license is denied. This would facilitate the rule becoming consistent with the statutory intent. The proposed amendments also amend the requirements for basic education training which is done prior to licensure for armored car security officers. The proposed amendments will allow for 8 of the 24 required training hours to be completed outside the classroom in security subject areas of the instructor's choice. This allows for more flexibility in course content and in the mode of instruction.

SUMMARY OF THE RULE OR CHANGE: Subsections R156-63b-302a(1)(c) and (2)(c) delete the provisions requiring a copy of the driver's license or identification card for armored car applicants, qualifying agents, officers, directors, and shareholders. A new Subsection R156-63b-302h(2) adds that an interim permit shall automatically expire if an application for licensure is denied. In Subsection R156-63b-602(4), amendments delete the provision requiring direct student-teacher relationship. In Section R156-63b-603, the change amends the 24-hour requirement to 16 hours of basic classroom instruction which includes a direct student-teacher relationship and adds the provision of an additional 8 elective hours. The 16 basic classroom hours must be in the listed subject areas which were not changed. The number of hours required in each subject area are being deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101 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 \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
 ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed armored car security officers and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments in this filing regarding the reduction of classroom training hours may decrease the costs of small business owners that hire instructors and/or provide training to armored car security officers due to the eight hours of classroom instruction being removed. The proposed amendments allow for training to be potentially done in two days with the remaining eight hours achieved outside of a classroom setting. However, due to a wide range of circumstances, the Division is not able to determine any exact amount of potential decrease in costs to small businesses. The remaining proposed amendments will not impact costs of small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment in this filing regarding the reduction of classroom training hours may decrease the financial gain of security associations and companies providing training as a result of requiring fewer hours to be taught in the classroom. The proposed amendments may also decrease the costs for applicants seeking licensure by potentially needing less classroom instruction. However, due to a wide range of circumstances, the Division is not able to determine any exact amount of potential decrease in costs. The remaining proposed amendments will not impact other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments may decrease the costs of applicants for licensure as an armored car security officer by potentially not having to pay for up to eight hours of training and/or also allowing for the use of previous certifications. The Division does not anticipate that the remaining proposed amendments will alter compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing gives preclicensing education providers more flexibility to customize the content of their course offerings. In addition, it eliminates the requirement that education be conducted in circumstances where the students are in direct contact with the instructor. Education providers that choose to modify their programs according to these modified standards may experience costs to do so. Those costs 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:

♦ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at aprilellis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/12/2014 09:00 AM, 160 East 300 South, fourth floor, Salt Lake City, Utah

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
 R156-63b. Security Personnel Licensing Act Armored Car Rule.**

R156-63b-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an armored car company shall be accompanied by:

(a) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; ~~and~~

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel]; ~~and~~

~~(c) a copy of the driver license or an identification card issued by a state or territory of the United States or the District of Columbia to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel].~~

(2) An application for licensure as an armored car security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; ~~and~~

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety]; ~~and~~

~~(c) a copy of the driver license or identification card issued by a state or territory of the United States or District of Columbia to the applicant].~~

R156-63b-302h. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

~~(1)~~In accordance with Section 58-63-310, upon receipt of an application for licensure as an armored care security officer, the Division may immediately issue an interim permit to the applicant, if the applicant meets the following criteria:

(1)(a) the applicant submits with his application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

(b) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

(2) If an applicant's application is denied, an interim permit under this section shall automatically expire.

R156-63b-602. Operating Standards - Approved Basic Education and Training Program for Armored Car Security Officers.

To be designated by the Division as an approved basic education and training program for armored car officers, the following standards shall be met.

(1) The applicant for program approval shall pay a fee for the approval of the education program.

(2) There shall be a written education and training manual which includes performance objectives.

(3) The program for armored car security officers shall provide content as established in Sections R156-63b-603 and R156-63b-604.

(4) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means~~[, where there is a direct student-teacher relationship]~~. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(8) Instructors, who present continuing education hours and are licensed armored car security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63b-603. Operating Standards - Content of Approved Basic Education and Training Program for Armored Car Security Officers.

An approved basic education and training program for armored car security officers shall have ~~[the following components]~~ at least 24 hours of instruction including:

(1) [at least 24 hours of basic classroom instruction to include the] 16 hours of basic classroom instruction in which there is a direct student-teacher relationship that includes all of the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of an armored car security officer and the armored car security officer's role in today's society;

(b) state laws and rules applicable to armored car security;

(c) legal responsibilities of armored car security, including constitutional law, search and seizure and other such topics;

(d) ethics;

(e) use of force, emphasizing the de-escalation of force and alternatives to using force;

(f) police and community relations, including fundamental duties and the personal appearance of an armored car officer;

(g) sexual harrasment in the work place;

(h) driving policies and procedures, driver training and vehicle orientation;

(i) emergency situation response including terminal security, traffic accidents, robbery situations, homeland security and reducing risk potential through street procedures and tactics, securing robbery scenes, and dealing with the media; and

(j) armored operations, including proper paperwork, street control procedures, vehicle transfers, vault procedures, and other proper branch procedures~~[, and]~~.

(2) Eight hours of elective course work as determined by the instructor that may include:

(a) current certification in cardiopulmonary resuscitation (CPR), automated external defibrillator (AED), first aid, or any other recognized basic life saving certification;

(b) introduction to executive protection;

(c) basic self-defense;

(d) escort techniques;

(e) access control and the use of electronic detection devices;

(f) use of defensive items and objects;

(g) management of aggressive behavior, use of force, de-escalation techniques;

(h) homeland security involving bomb threats and anti-terrorism;

(i) Americans with Disabilities Act (ADA) compliance; and

(j) prior training as evidenced by third-party documentation may be accepted at the trainer's discretion to count towards the eight hours of elective training.

~~(3) A final examination that:
 (a) competently examines the student on the subjects included in the 16 hours of basic classroom instruction in the approved program of education and training; and
 (b) mandates a minimum pass score of 80%.
 (k) a final examination which competently examines the student on the subjects included in the 24 hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%.~~

KEY: licensing, security guards, armored car security officers, armored car company
Date of Enactment or Last Substantive Amendment: ~~October 29, 2013~~ 2014
Notice of Continuation: September 9, 2013
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-303
 Coverage Groups**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38465
 FILED: 04/28/2014**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to specify when coverage ends for the 12-Month Transitional Medicaid (TR) program in accordance with Pub. L. No. 113-93, and to clarify eligibility requirements for the Hospital Presumptive Eligibility program.

SUMMARY OF THE RULE OR CHANGE: This amendment specifies when coverage ends for the TR program. It also complies with a mandate from the Centers for Medicare and Medicaid Services (CMS) on hospital presumptive eligibility, which clarifies uncountable income and limits the frequency in which an individual may receive coverage. This amendment also updates incorporations by reference and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 113-93 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Adds 42 CFR 435.1110, published by Government Printing Office, 10/01/2013

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There is no impact to the state budget because this amendment only clarifies eligibility requirements and specifies duration of coverage.
 ♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid recipients.
 ♦ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only clarifies eligibility requirements and specifies duration of coverage.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this amendment only clarifies eligibility requirements and specifies duration of coverage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because this amendment only clarifies eligibility requirements and specifies duration of coverage.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business as it merely conforms the rules to new legal requirements.

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 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
 R414-303. Coverage Groups.
 R414-303-6. 12-Month Transitional Medicaid.**

(1) The Department adopts and incorporates by reference Title XIX of the Social Security Act Section 1925 in effect January 1, 2013, to provide 12 months of extended medical assistance when the

parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Section 1931(c)(2) of the Social Security Act.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional Medicaid.

(b) Children who live with the parent are eligible to receive Transitional Medicaid.

(2) Pub. L. No. 113 93 requires the Transitional Medicaid program to end after March 31, 2015.

R414-303-11. Presumptive Pregnant Woman and Child Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.1102, October 1, 2012 ed., and also adopts and incorporates by reference 78 FR 42303, in relation to presumptive eligibility for pregnant women and children under 19 years of age.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) The Department provides medical assistance to children under the age of 19 during a period of presumptive eligibility if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-3;

(b) for a child under age 6, the declared household income does not exceed 139% of the federal poverty guideline applicable to the declared household size;

(c) for a child six through 18 years of age, the declared household income does not exceed 133% of the federal poverty guideline applicable to the declared household size; and

(d) the child is not already covered under Medicaid or CHIP.

(7) A child may receive medical assistance during only one period of presumptive eligibility in any six-month period.

(8) A child determined presumptively eligible may receive presumptive eligibility only through the applicable period or until the end of the month in which the child turns 19, whichever occurs first.

(9) The Department adopts and incorporates by reference 42 CFR 435.1110, October 1, 2013 ed.[78-FR-42303], which relates to a hospital electing to be a qualified entity to make presumptive eligibility decisions.

(a) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups defined in Section 1920 (pregnant women, former foster care children, parents or caretaker relatives), Section 1920A (children under 19 years of age) and 1920 B (breast and cervical cancer patients but only Centers for Disease Control provider hospitals can do presumptive eligibility for this group) of the Social Security Act, January 1, 2013.

(b) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(c) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(d) The eligibility agency may not count as income Veteran's Administration (VA) payments.

(e) The eligibility agency may not count as income child support payments.

(f) The eligibility agency may not count as income educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(g) The following coverage groups may only receive one presumptive eligibility period in a calendar year:

(i) Parents or caretaker relatives;

(ii) Children under 19 years of age;

(iii) Former foster care children; and

(iv) Individuals with breast or cervical cancer.

(h) The pregnant woman coverage group is limited to one presumptive eligibility period per pregnancy.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

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; 26-1-5

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-306
Program Benefits and Date of Eligibility**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38466

FILED: 04/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to specify when coverage ends for the Qualified Individuals (QI) program in accordance with Pub. L. No. 113-93.

SUMMARY OF THE RULE OR CHANGE: This amendment specifies when coverage ends for the QI program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 113-93 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 amendment does not affect services or eligibility for Medicaid recipients, and only specifies the duration of coverage for the QI program.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid recipients.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this amendment does not affect services or eligibility for Medicaid recipients, and only specifies the duration of coverage for the QI program.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this amendment does not affect services or eligibility, and only specifies the duration of coverage for the QI program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because this amendment does not affect services or eligibility, and only specifies the duration of coverage for the QI program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business as it merely conforms the rule to new legal requirements.

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 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-306. Program Benefits and Date of Eligibility.

R414-306-2. QMB, SLMB, and QI Benefits.

(1) The Department must provide the services outlined under 42 U.S.C. 1396d(p) and 42 U.S.C. 1396u-3 for Qualified Medicare Beneficiaries.

(2) The Department provides the benefits outlined under 42 U.S.C. 1396d(p)(3)(ii) for Specified Low-Income Medicare Beneficiaries and Qualifying Individuals. Benefits for Qualifying Individuals are subject to the provisions of 42 U.S.C. 1396u-3.

(3) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

(4) Pub. L. No. 113 93 requires the Qualifying Individuals program to end after March 31, 2015.

KEY: effective date, program benefits, medical transportation
Date of Enactment or Last Substantive Amendment: [January 10, 2014]

Notice of Continuation: January 23, 2013

Authorizing, and Implemented or Interpreted Law: 26-18

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-401-3
Assessment**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38478

FILED: 05/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to calculate the per patient day assessment for both nursing facilities and intermediate care facilities for persons with intellectual disabilities (ICFs/ID).

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), every nursing facility is assessed at the uniform rate of \$15.40 per patient day, which is an increase from the previous \$14.57 per patient day assessment, based upon projected days and a one-time increase in the budget. In Subsection R414-401-3(2), ICFs/ID are assessed at the uniform rate of \$8.48 per patient day, which is an increase from the previous \$6.50 per patient day assessment, based upon projected days and an assessment target from the 2014 legislative session. These updates are based on estimates of patient days for state fiscal year 2015 and the appropriation amounts.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The update to the facility assessment rate is anticipated to be budget neutral as it updates the collection rate based on projected days in state fiscal year 2015 and the appropriation amount. The update to the ICF/ID assessment rate is not budget neutral as it updates the collection rate based on projected days in state fiscal year 2015 and the appropriation amount.

◆ **LOCAL GOVERNMENTS:** Inasmuch as swing beds are variable, it is not possible to determine the cost or savings to local hospital and swing bed facilities.

◆ **SMALL BUSINESSES:** Medicaid nursing facility providers will realize an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize an increased cost based upon the increase in the assessment rate. However, with the federal drawdown of funds, they will receive higher reimbursements. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid nursing facility providers will realize an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize an increased cost based upon the increase in the assessment rate. However, with the federal drawdown of funds, they will receive higher reimbursements. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of \$0.83 per non-Medicare patient day from each nursing facility and an increase of \$1.98 per qualifying patient day for the ICF/ID providers. The assessment monies are used to draw down federal matching funds that result in higher reimbursement rates than would be possible without the assessment monies. All Medicaid-certified nursing and swing bed facilities have benefitted from this process. The amount of overall gain depends on the number of Medicaid patients in the facility. In addition, there would be an increase in cost to non-Medicaid-certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This may have some impact on non-Medicaid certified facilities.

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 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-401. Nursing Care Facility Assessment.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$[~~14.57~~]15.40 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$[~~6.50~~]8.48 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities[~~effective January 1, 2006~~]. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

KEY: Medicaid, nursing facility

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

Notice of Continuation: June 25, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

**Housing Corporation (Utah),
Administration**

R460-6

Adjudicative Proceedings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38452

FILED: 04/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the amendment is to clarify the procedures for an informal adjudicative proceeding, as well as to establish procedures and qualifications for a formal adjudicative proceeding.

SUMMARY OF THE RULE OR CHANGE: Section R460-6-1 changes include: 1) add option for the president of Utah Housing Corporation (UHC) to elect whether an adjudicative proceeding will be formal or informal; 2) add language detailing what must be contained in a written request for adjudicative proceeding and to whom such request should be provided; 3) allow for a single adjudicative proceeding to be conducted for similar requests; and 4) add a restriction on submission of additional pleadings and amendments after certain steps. Section R460-6-2 changes include an inclusion of additional information in the notice of adjudicative proceeding regarding whether the proceeding is formal or non-formal and establishes dates whereby such notices shall be sent. Section R460-6-3 changes: 1) provide for the presiding officer to hold a hearing or to determine whether or not a hearing will be held; and 2) clarify that access to certain of UHC's information is subject to any disclosure exemption afforded under the Governmental Records Access and Management Act. Section R460-6-4 was added in its entirety to detail the procedures for a formal adjudicative proceeding including: 1) when notices shall be filed; 2) dates by when the formal proceeding shall be held; 3) specific actions to be taken during the proceeding; 4) how interventions will be handled; and 5) that all formal adjudicative proceedings will

be audio recorded. Section R460-6-5 adds language providing for a reconsideration request of a determination made by the presiding officer and the procedure for submitting such a request.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63G-4-202 through 63G-4-209 and Subsection 35A-8-711(5)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Subsection 35A-8-702(3)(b) states that UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule simply create the ability for the determination of an adjudicative proceeding to be formal or informal and clarifies the steps to be taken in that process. UHC has reviewed the changes in light of any anticipated increase in costs or savings and do not find any increases beyond the scope of the existing rule.

◆ **LOCAL GOVERNMENTS:** None--Subsection 35A-8-702(3)(b) states that UHC is a "financially independent body" and is not reliant on any appropriations from a local government to fund its efforts. Furthermore, the changes made to this rule simply create the ability for the determination of an adjudicative proceeding to be formal or informal and clarifies the steps to be taken in that process. UHC has reviewed the changes in light of any anticipated increase in costs or savings and do not find any increases beyond the scope of the existing rule.

◆ **SMALL BUSINESSES:** None--The changes made to this rule simply create the ability for the determination of an adjudicative proceeding to be formal or informal and clarifies the steps to be taken in that process. UHC has reviewed the changes in light of any anticipated increase in costs or savings and do not find any increases beyond the scope of the existing rule for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The changes made to this rule simply create the ability for the determination of an adjudicative proceeding to be formal or informal and clarifies the steps to be taken in that process. UHC has reviewed the changes in light of any anticipated increase in costs or savings and do not find any increases beyond the scope of the existing rule for any other person or entity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The changes made to this rule simply create the ability for the determination of an adjudicative proceeding to be formal or informal and clarifies the steps to be taken in that process. Compliance to the rule with these amendments requires nothing more than the original rule, i.e., reading the rule and following the process laid out therein.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no demonstrable savings or expenditures on business from this rule. However, the additional clarity provided, as well as the opportunity for a formal adjudicative

proceeding will enable UHC and its stakeholders to more easily articulate the defined terms as laid out in this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HOUSING CORPORATION (UTAH)
ADMINISTRATION
2479 LAKE PARK BLVD
WEST VALLEY CITY, UT 84120
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Grant Whitaker, President and CEO

R460. Housing Corporation, Administration.

R460-6. Adjudicative Proceedings.

R460-6-1. Nature of Proceeding.

~~(1) An[y proceeding to terminate the eligibility of a mortgage lender, servicer, or participant as contemplated in R460-5, or any other] adjudicative proceeding conducted by UHC, shall generally be conducted as an informal adjudicative proceeding, as provided for in Section 63G-4-203; however at the election of the president of UHC, the proceeding may be conducted as a formal adjudicative proceeding, as provided for in Sections 63G-4-204 through 63G-4-209. The president of UHC will appoint the presiding officer of an adjudicative proceeding who may be the chair[man], vice chair[man], acting chair[man] or president of UHC pursuant to Section [9-4-904]35A-8-704 and [9-4-905]35A-8-706.~~

~~(2) All requests for formal or informal adjudication proceedings shall be made in writing and signed by the person invoking the jurisdiction of UHC (the "affected party"), or by that person's representative, shall only be addressed to the president, shall be delivered to the offices of UHC, and shall include:~~

- ~~(a) the names and addresses of all persons to whom a copy of the request for UHC action is being sent;~~
- ~~(b) UHC's file number or other reference number, if known;~~
- ~~(c) the date that the request for UHC action was mailed;~~
- ~~(d) a statement of the legal authority and jurisdiction under which UHC action is requested;~~
- ~~(e) a statement of the relief or action sought from UHC; and~~
- ~~(f) a statement of the facts and reasons forming the basis for relief or UHC action.~~

~~(3) If the affected party knows of other persons who have a direct interest in the UHC action requested, then the affected party shall mail a copy of his or her request to each such person.~~

~~(4) The presiding officer may conduct a single adjudicative proceeding for similar requests for UHC action.~~

~~(5) The presiding officer may restrict the submission of additional pleadings and amendment of pleadings after a response has been made by UHC to a request for UHC action.~~

R460-6-2. Notice of Adjudicative Proceeding.

~~[Not less than twenty days prior to any proposed agency action.] Whether an adjudicative proceeding is commenced by UHC or requested by an affected party, UHC shall file and serve notice of the adjudicative proceeding upon the affected [party]parties, which notice shall be in writing, shall be mailed postage paid by first-class mail, shall designate the presiding officer, shall be signed by the president of UHC, shall include a statement of whether the adjudicative proceeding is to be conducted informally or formally and otherwise shall be prepared in accordance with the requirements of Section 63G-4-201. For informal adjudication, such notice shall be sent not less than 20 calendar days prior to the proceeding. For formal adjudication, such notice shall be sent not less than 60 calendar days prior to the proceeding (subject to any extensions pursuant to R460-6-4) and shall comply with the requirements set forth in R460-6-4(1) and R460-6-4(2), as applicable.~~

R460-6-3. Procedures for Informal Adjudicative Proceeding.

(1) No answer or pleading responsive to the notice of adjudicative proceeding need be filed by the affected party.

(2) No hearing shall be held unless the affected party requests a hearing in writing or the presiding officer elects to hold a hearing. The written request for a hearing must be received by UHC no more than ~~[ten]10~~ calendar days after the service of the notice of adjudicative proceeding.

(3) If a hearing is requested by the affected party, ~~the presiding officer shall elect whether to conduct a hearing given the nature of the dispute. If the presiding officer does elect to conduct a hearing, it will be held no sooner than [ten]10~~ calendar days after notice of the hearing is mailed to the affected party. The affected party shall be permitted to testify, present evidence, and comment on UHC's ~~[the-]proposed [agency-]action~~. Prior to the hearing, the affected party may have access to information contained in UHC's files and to ~~[all-] materials and information gathered by UHC in [any]its~~ investigation relevant to the adjudicative proceeding, but discovery is prohibited. Access to such information, files and materials is subject to any disclosure exemption afforded under UHC's Governmental Records Access and Management Act (GRAMA) rules. ~~[UHC]The presiding officer may issue subpoenas or other [discovery-]orders to compel production of necessary evidence.~~

(4) Intervention is prohibited.

~~[(5) All informal adjudicative proceedings shall be open to all parties.~~

R460-6-4. Procedures for Formal Adjudicative Proceeding.

(1) If UHC denies an affected party's request for a formal adjudicative proceeding, UHC shall send notice to the affected party of the denial stating the proceeding will not be a formal adjudicative proceeding, and stating whether the request for a formal proceeding is denied or whether the proceeding will be held as an informal proceeding, and stating that the affected party may request a hearing before UHC to challenge the denial.

(2) If UHC's proceeding is to be conducted as a formal proceeding, UHC shall send notice to all known interested parties

stating that a written response must be filed with UHC by the affected party within 30 calendar days of when the notice was mailed.

(3) The presiding officer may elect to hold a pre-hearing conference with all affected parties or their representatives to review the issues of the dispute and the procedure to be followed.

(4) A hearing shall be held no more than 60 calendar days after the service of the notice of formal adjudicative proceeding. However, in unusual circumstances, the presiding officer may elect to extend the date of the hearing for good cause.

(5) The affected parties shall be permitted to testify, present evidence, and comment on UHC's proposed action. In addition to access to the information available in connection with an informal adjudicative proceeding pursuant to R460-6-3(3), the presiding officer may permit additional discovery as is reasonable given the nature of the dispute. The presiding officer may issue subpoenas or other orders to compel production of necessary evidence.

(6) Intervention determinations will be made by and subject to conditions established by the presiding officer.

(7) UHC shall record the audio of all formal adjudicative proceedings. Any party, at its sole expense, can have such audio recordings transcribed.

R460-6-[4]5. Decision of UHC.

(1) Within [thirty]30 calendar days after any hearing requested by an affected party, or after the party's failure to request a hearing within the time prescribed under R460-6-3, UHC shall issue a signed order in writing stating UHC's decision and such other information as is required by Section 63G-4-203. An order of default may be issued by UHC if circumstances described in Section 63G-4-209(1) shall occur.

(2) Requests for reconsideration of determinations made by the presiding officer in an adjudicative proceeding shall be submitted in the same manner as a request for UHC action as specified in R460-6-1(2), and must be submitted within 20 calendar days of UHC's issuance of a determination or signed order.

(3) Requests for reconsiderations of determinations will be evaluated by the presiding officer who may be the chair, vice chair, acting chair or president of UHC pursuant to Section 35A-8-704 and 35A-8-706. The presiding officer will issue an order granting or denying such request within 20 calendar days of its receipt by the presiding officer. If the presiding officer does not issue an order within such 20 calendar day period, the request shall be considered to be denied.

(4) No separate hearings will be conducted, and no oral arguments will be heard in connection with a request for reconsideration, unless requested by the presiding officer.

KEY: housing finance

Date of Enactment or Last Substantive Amendment: [1990]2014

Notice of Continuation: September 28, 2012

Authorizing, and Implemented or Interpreted Law: 63G-4

Human Resource Management, Administration **R477-1** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38456

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add two definitions and amend redundancy within two definitions.

SUMMARY OF THE RULE OR CHANGE: "Wage" and "Work period" were added as definitions. Redundancies were removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

- ◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned ~~salary~~ wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: A DHRM approved change of a position from one job to another job or a salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head ~~or commissioner~~.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head ~~or commissioner~~.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency and a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, including:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) **Classification Grievance:** The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) **Classified Service:** Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) **Classification Study:** A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) **Compensatory Time:** Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) **Contractor:** An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) **Critical Incident Drug or Alcohol Test:** A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) **Demotion:** A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) **Detailed Position Record Management Report:** A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) **DHRM:** The Department of Human Resource Management.

(35) **DHRM Approved Recruitment and Selection System:** The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) **Disability:** Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(37) **Disciplinary Action:** Action taken by management under Rule R477-11.

(38) **Dismissal:** A separation from state employment for cause under Section R477-11-2.

(39) **Dual State Employment:** Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(40) **Drug-Free Workplace Act:** A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(41) **Employee Personnel Files:** For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(42) **Employment Eligibility Verification:** A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(43) **"Escalator" Principle:** Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(44) **Excess Hours:** A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(45) **Fitness For Duty Evaluation:** Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) **FLSA Exempt:** Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) **FLSA Nonexempt:** Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) **Follow Up Drug or Alcohol Test:** Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(49) **Furlough:** A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) **Grievance:** A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(51) **Grievance Procedures:** The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(52) **Gross Compensation:** Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(53) **Highly Sensitive Position:** A position approved by DHRM that includes the performance of:

- (a) safety sensitive functions:
 - (i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);
 - (ii) directly related to law enforcement;
 - (iii) involving direct access or having control over direct access to controlled substances;
 - (iv) directly impacting the safety or welfare of the general public;
 - (v) requiring an employee to carry or have access to firearms; or
 - (b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:
 - (i) financial assets, liabilities, and account information;
 - (ii) social security numbers;
 - (iii) wage information;
 - (iv) medical history;
 - (v) public assistance benefits; or
 - (vi) driver license

(54) **Hiring List:** A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(55) HRE: Human Resource Enterprise; the state human resource management information system.

(56) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(57) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(58) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(59) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(60) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(61) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(62) Job Requirements: Skill requirements defined at the job level.

(63) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(64) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(65) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(66) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(67) Market Comparability Adjustment: Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.

(68) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(69) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(70) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(71) Nonfeasance: Failure to perform either an official duty or legal requirement.

(72) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(73) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible

work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals are targets are met.

(74) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(75[3]) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(76[4]) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(77[5]) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(78[6]) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(79[7]) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq.[2] for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(78[8]) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(81[79]) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(82[9]) Position Identification Number: A unique number assigned to a position for FTE management.

(83[+]) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(84[2]) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(85[3]) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(86[4]) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to

perform assigned duties and responsibilities and to determine if career service status should be granted.

(87[5]) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(88[6]) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(89[7]) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(90[88]) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(91[89]) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(92[9]) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(93[+]) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(94[2]) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(95[3]) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(96[4]) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(97[5]) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(98[6]) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(99[7]) Salary Range: [An e]Established minimum [salary rate] and maximum [salary rate] wages assigned to a job.

(100[98]) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(101[99]) Separation: An employee's voluntary or involuntary departure from state employment.

(102[9]) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(103[+]) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(104[2]) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(105[3]) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(106[4]) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(107[5]) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(108[6]) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(109[7]) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(110) Wage: The fixed hourly rate paid to an employee.

(111) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: July 1, 2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18

Human Resource Management,
Administration
R477-2-3
Fair Employment Practice and
Discrimination

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38457

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a reference to the Veteran's Statute.

SUMMARY OF THE RULE OR CHANGE: Adds a reference to the veteran's statute for exclusions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-3-1 and Section 63G-5-201 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
- ◆ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-2. Administration.

R477-2-3. Fair Employment Practice and Discrimination.

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, gender, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information

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

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-18; 67-19-15

Human Resource Management,
Administration
R477-3-4
Position Classification Review

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 38454
FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify that classification review requests must come from agency management not just from an "agency".

SUMMARY OF THE RULE OR CHANGE: The change adds "management" to Subsection R477-3-4(1)(b).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-16-6 and Section 67-19-12

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
- ◆ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION

ROOM 2120 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:

- ◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-3. Classification.

R477-3-4. Position Classification Review.

(1) A formal classification review may be conducted under the following circumstances:

- (a) as part of a classification study;
- (b) at the request of ~~an~~ agency management, with the approval of the Executive Director, DHRM or designee; or
- (c) as part of a classification grievance review

(2) DHRM shall determine if there have been sufficient significant changes in the duties of a position to warrant a formal review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

KEY: administrative procedures, grievances, job descriptions, position classifications

Date of Enactment or Last Substantive Amendment: ~~July 2, 2012~~ 2014

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

Human Resource Management,
Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38458
FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate provisions of the Affordable Care Act and to match transfer and reassignment requirements with rules regarding longevity.

SUMMARY OF THE RULE OR CHANGE: Changes 20 hours per week to 40 hours per pay period for benefits eligible criteria. The reference to longevity rules are made to match the required 12 months versus the 3 years. Minor changes the hiring list section, from "the" list to "a" list and clarification to which applicants are considered for a position.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-4. Filling Positions.

R477-4-1. Authorized Recruitment System.

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee:

- (i) is hired to work part time indefinitely;
- (ii) shall work less than 30 hours per week; and
- (iii) shall be notified annually of the temporary status of the

position; or

(b) be Schedule TL, in which the employee:

- (i) is hired to work on a time limited basis; and
- (ii) shall be notified annually of the temporary status of the

position.

(c) may, at the discretion of management, be offered benefits if working a minimum of [20]40 hours per pay period[week].

(d) if the required work hours of the position meet or exceed 30 hours per week for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

(6) Disclosure statements shall be obtained and reference and background checks shall be conducted for all Schedule AB, AC, AD and AR new hire appointees.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

- (a) DHRM business practices;
- (b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;
- (c) equal employment opportunity principles;
- (d) Section 52-3-1, employment of relatives;
- (e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

- (a) reemployment of a veteran eligible under USERRA;
- (b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;
- (c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
- (d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;
- (e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;
- (f) reclassification; or
- (g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

- (i) Information about the DHRM approved recruitment and selection system; and
 - (ii) opening and closing dates.
- (b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

- (a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.
- (b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

(d) A transfer may include a decrease in actual wage.

(e) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(f) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and is not in longevity. Employees shall be eligible for a longevity increase when they have~~Longevity rules may not apply until the employee has~~ been above the salary range maximum for 12 months~~three years~~ and all other longevity criteria are met.

(g) An employee in longevity, who is transferred or reassigned and remains in longevity, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(2) A reassignment or transfer may include assignment to:

- (a) a different job or position with an equal or lesser salary range maximum;
- (b) a different work location; or
- (c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(d) A rehired employee may be offered any salary within the salary range for the position.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

- (a) a detailed position record (DPR) based upon a current job or position analysis;
- (b) an initial, impartial screening of the individual's qualifications;
- (c) impartial evaluation and results; and
- (d) reasonable accommodation for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using [the]a DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-4(11).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-15. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: ~~January 14,~~ 2014

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

Human Resource Management,
Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38469

FILED: 04/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide consistency in terms and phrases and to clarify existing rules.

SUMMARY OF THE RULE OR CHANGE: The changes: clarify salary adjustments in connections with administrative actions; and clarify pay for performance awards, insurance coverage, and employees converting to career service.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule may accelerate when employees initially receive a longevity increase. The employee demographic affected is minimal.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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ROOM 2120 STATE OFFICE BLDG
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SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-6. Compensation.

R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop ~~and salary ranges for~~ ~~adopt~~ pay plans for each ~~job~~ ~~position~~ in classified service. ~~Positions~~ ~~Jobs~~ exempt from classified service are identified in Subsection R477-3-1(1).

(a) Each job description shall include ~~a salary range~~ ~~s with established minimum and maximum rates~~.

(b) ~~[A salary range includes all pay rates from minimum to maximum.~~

~~_____ (c) Pay rate~~ ~~Wage~~ increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum ~~wage~~ ~~rate~~ within the salary range, if the difference between the current ~~wage~~ ~~salary rate~~ and the ~~salary range maximum~~ ~~rate~~ is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments and longevity.

(d) ~~Wage~~ ~~Pay rate~~ decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum ~~wage~~ ~~rate~~ within the salary range, if the difference between the current ~~salary rate~~ ~~wage~~ and the ~~salary range minimum~~ ~~rate~~ is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments.

R477-6-2. Allocation to the Pay Plans.

(1) Each job in classified service shall be assigned to a salary range.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ranges in the market; or

(b) a comparison of the state's benchmark job salary ranges to salary ranges for similar jobs[positions] in the market through an annual compensation survey conducted by DHRM.

(i) Market comparability salary range adjustment recommendations shall be included in the annual compensation plan and shall be submitted to the Governor no later than October 31 of each year.

(ii) Market comparability salary range adjustments shall be legislatively approved.

(iii) If market comparability adjustments are approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-3. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) ~~[Reemployed veterans]~~Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position ~~[at their previous salary range]~~. Reemployment shall include the same seniority status, wage[salary], including any cost of living adjustments, general increase, reclassification of the service member[veteran's] preservice position, or market comparability adjustments that would have affected the service member's[veteran's] preservice position during the time spent by the affected service member[veteran] in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) ~~[Merit increases. The following conditions apply if merit pay increases are authorized and funded by the legislature:~~

~~(a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are met:~~

~~(i) Employee may not be in longevity.~~

~~(ii) Employee may not be paid at the maximum of their salary range.~~

~~(iii) Employee has received a minimum rating of successful on their most recent performance evaluation, which shall have been within the previous twelve months.~~

~~(iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.~~

~~(b) Employees designated as schedule AA, AQ and AU are not eligible for merit increases.~~

~~(c) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office to determine if they are eligible for merit increases.~~

~~(2) Promotions.~~

(a) An employee who is in, ~~except for those~~ designated schedules B, AD, AR, AT, or AW and is ~~in or FL,~~ promoted to a job[position] with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage[salary] increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-4(3), governing longevity. ~~[Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).]~~

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

~~(2)~~(3) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job[position] with a salary range maximum exceeding the employee's current salary range maximum may receive a wage[pay rate] increase of at least 1/2% or up to the salary range maximum ~~[rate]~~. An employee shall be placed within the new salary range.

~~(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range.]~~ Placement of an employee in longevity shall be consistent with Subsection R477-6-4~~(3)~~(4).

~~(b)~~(e) An employee whose job[position] is reclassified to a job[position] with a lower salary range shall retain the current wage[salary]. ~~[The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.]~~

~~(3)~~(4) Longevity.

(a) An employee shall receive an initial longevity increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at or above the maximum of the current salary range for at least one year and received a passing performance appraisal rating ~~[of successful or higher]~~ within the 12-month period preceding the longevity increase.

(b) ~~[An employee in longevity shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans:~~

~~(e) An employee who has received the initial longevity increase is then~~[in longevity shall only be] eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating ~~[of successful or higher]~~ within the 12-month period preceding the longevity increase.

~~(c)~~(d) An employee in longevity ~~[who is reclassified or reassigned to a position with a lower salary range]~~ shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

~~(d)~~(e) An employee in longevity who is ~~[promoted or]~~ reclassified to a job[position] with a higher salary range maximum shall only receive a wage[salary] increase if the current actual wage is less than the salary range maximum of the new job[position]. At the discretion of agency management ~~[F]~~ the salary increase shall be at least 1/2% or up to the salary range maximum ~~[rate]~~ of the new job[position].

~~(e) An employee in longevity who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.~~

(f) An employee in longevity who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains in longevity, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous twelve months.

(g) An [E]employee[s] who [are]is not in longevity and [are]is reclassified, transferred, reassigned, or [reassigned]receiving an administrative adjustment and has[have] a current actual wage that is above the salary range maximum of the new job[position] [are]is considered to be above maximum and [are]is not in longevity. Employees shall be eligible for a longevity increase when they have[Longevity rules may not apply until the employee has] been above the salary range maximum for 12 months[three years] and all other longevity criteria are met.

(~~g~~)(h) An [E]employee[s] in Schedules AB, IN, or TL [are]is not eligible for the longevity program.

(4)(5) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, may not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment ~~shall~~may not result in an increase in the current actual wage unless the employee is below the minimum of the new salary range.

(c) An employee whose position is changed by administrative adjustment to a job[position] with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum[salary]. ~~The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.]~~

(5)(6) Reassignment.

An employee's current actual wage may not be decreased[lowered] except when provided in federal or state law. Wage ~~[rate-]decreases shall be at least 1/2% or down to the salary range minimum~~[rate in the salary range].

(6)(7) Transfer.

Management may decrease the current actual wage of an employee who transfers to another job[position] with [a]the same or lower salary range maximum. Wage ~~[rate-]decreases shall be at least 1/2% or down to the salary range minimum~~[rate in the salary range].

(7)(8) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum[rate of the new position's salary range] as determined by the agency head or designee. The agency head or designee may move an employee to a job[position] with a lower salary range concurrent with the reduction in the current actual wage.

(8)(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum[rate of the salary range].

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for ~~[A]administrative~~ [S]salary [F]increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage ~~[rate-]increases shall be at least 1/2% or up to the salary range maximum~~[rate of the salary range]. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum or in longevity may not be granted administrative salary increases.

(9)(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage[salary] may not be less than the salary range minimum[of the salary range].

(b) Wage ~~[rate-]decreases shall be at least 1/2% or down to the salary range minimum~~[rate of the salary range].

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10)(11) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a wage[salary] increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage [salary rate] and the same or higher salary range that the employee would have received without the career mobility assignment.

(11)(2) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage ~~[rate-]increases or decreases~~.

R477-6-5. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(a) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based incentive awards shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the incentive award based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

R477-6-6. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(b) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.

(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

~~(7) All insurance coverage, excluding COBRA, shall end:~~

~~(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or~~

~~(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.~~

R477-6-7. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum [~~rate of the current salary range~~]. An employee at the current salary range maximum [~~of the current salary range~~] or in longevity shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-5(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-8. [~~;~~

~~(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;~~

~~(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;~~

~~(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.]~~

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage [~~salary~~] increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee may not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-9. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: [~~salaries~~]wages, employee benefit plans, insurance, personnel management

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

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

Human Resource Management,
Administration
R477-7
Leave

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38455

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the rule regarding leave.

SUMMARY OF THE RULE OR CHANGE: The changes: set limits on cumulative leave allowed during a specified period of 24 months; eliminate provisions regarding the conversion of sick leave hours; and set up parameters on leave bank eligibility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-14.2 and Section 67-19-14.4 and Section 67-19-14.5 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-7. Leave.****R477-7-1. Conditions of Leave.**

- (1) An employee shall be eligible for benefits when:
 - (a) in a position designated by the agency as eligible for benefits; and
 - (b) in a position which normally requires working at least 40 hours per pay period.
- (2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.
- (3) An employee shall use leave in no less than quarter hour increments.
- (4) An employee may not use annual, sick, converted sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.
- (5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.
- (6) An employee may not use any type of leave except jury leave to accrue excess hours.
- (7) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.
- (8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.
 - (a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.
 - (b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.
 - (c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:
 - (i) leave without pay;
 - (ii) administrative leave specifically approved by management to be used after the last day worked;
 - (iii) leave granted under the FMLA; or
 - (iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(9) After ~~four~~^{six} months cumulative leave from the first day of absence due to the~~from or~~ inability to perform the regular position in a 24 month period, the employee shall be separated from employment regardless of paid leave status unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(10) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

- (a) New Years Day -- January 1
- (b) Dr. Martin Luther King Jr. Day -- third Monday of January
- (c) Washington and Lincoln Day -- third Monday of February
- (d) Memorial Day -- last Monday of May
- (e) Independence Day -- July 4
- (f) Pioneer Day -- July 24
- (g) Labor Day -- first Monday of September
- (h) Columbus Day -- second Monday of October
- (i) Veterans' Day -- November 11
- (j) Thanksgiving Day -- fourth Thursday of November
- (k) Christmas Day -- December 25
- (l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of state service:

- (a) less than 5 years -- four hours per pay period;
- (b) at least 5 and less than 10 years -- five hours per pay period;
- (c) at least 10 and less than 20 years -- six hours per pay period;
- (d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year, subject to Subsection R477-7-1(5).

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children, or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

~~(1)~~(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

~~(2) [To be eligible, an employee shall have accrued a total of 144 hours or more of sick leave in Program I and Program II combined at the beginning of the first pay period of the calendar year.~~

~~(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to Program II converted sick leave.~~

~~(b) The maximum hours of converted sick leave an employee may accrue in Program I and Program II combined is 320.~~

~~(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.~~

~~(d) In order to prevent or reverse the conversion, an employee shall:~~

~~(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or~~

~~(ii) notify agency management no later than the end of February in order to reverse the conversion.~~

~~(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar year in excess of 64 to converted sick leave hours in Program II.~~

~~(3) An employee may use converted sick leave as annual leave or as regular sick leave.~~

~~(3)~~(4) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

~~(4)~~(5) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

~~(5)~~(6) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

~~(6)~~(7) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

~~(7)~~(8) A retired employee who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall have a new benefit calculated on any new Program II converted sick leave hours accrued for the new period of employment, upon subsequent retirement. The employee shall be reemployed for at least two years before receiving this benefit.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006 shall be Program II sick leave hours.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5) (b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall have a new benefit calculated on any new Program II sick leave hours accrued for the new period of employment, upon subsequent retirement. The employee shall be reemployed for at least two years before receiving this benefit.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(4) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the unit where the salary is recorded.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

- (b) parents;
- (c) siblings;
- (d) children;
- (e) all levels of grandparents; or
- (f) all levels of grandchildren.

R477-7-10. Military Leave.

An employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Section 39-3-2.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for a disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) Excluding leave allowed under state or federal law, an employee may receive up to four months cumulative leave without pay in a 24 month period.

(2) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(3) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(4) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(5) After four months cumulative leave without pay in a 24 month period, the employee shall be separated from employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM. [An employee shall apply in writing to agency management for approval of a leave of absence without pay.

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(b) The employee shall be entitled to previously accrued annual and sick leave.

(c) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law.

(2) Nonmedical Reasons

~~(a) Approval may be granted for continuous leave for up to six months from the last day worked in the employee's regular position. Exceptions may be granted by the agency head.~~

~~(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.]~~

~~(6)(e) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.~~

~~(7)(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.~~

~~(3) Medical Reasons~~

~~(a) An employee who does not qualify for FMLA, Workers Compensation, or Long Term Disability may be granted leave without pay for medical reasons not to exceed six months cumulative from the first day of absence or inability to perform the employee's regular position.~~

~~(i) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.~~

~~(b) After six months cumulative from the first day of absence or inability to perform the regular position, the employee shall be separated from employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.~~

~~(c) Except as otherwise provided under the Family Medical Leave Act, an employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.~~

~~(8)(d) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.~~

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 work weeks of family and medical leave each calendar year for any of the following reasons:

- (a) birth of a child;
- (b) adoption of a child;
- (c) placement of a foster child;
- (d) a serious health condition of the employee; or
- (e) care of a spouse, ~~dependent~~ child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 work weeks of family and medical leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

- (a) be employed by the state for at least one year;
- (b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

- (a) thirty days in advance for foreseeable needs; or
- (b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

- (i) Program III sick leave;
- (ii)(A) Compensatory time;
- (B) Excess leave; or
- (C) Annual leave;
- (iii)(A) Converted sick leave;
- (B) Program II sick leave; or
- (C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iii) employee has been absent from work for four[six] months in a 24 month period;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position after four[six] months cumulative leave in a 24 month period [~~from the first day of absence or inability to perform in the regular position~~], or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) An employee who has applied [~~is determined eligible~~] for the Long Term Disability Program (LTD) may be granted up to four[six] months [~~of leave~~] cumulative leave in a 24 month period [~~from the first day of absence or inability to perform the regular position~~] as the result of health conditions, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position. [~~Exceptions to the six months may be granted by the agency head in consultation with DHRM.~~]

(a) After four months of cumulative leave in a 24 month period, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM. [~~For LTD qualifying purposes, the medical leave begins on the day after the last day the employee worked in the employee's regular position. LTD requires a waiting period before benefit payments begin.~~]

(2)[b] An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked or the last day of FMLA leave.

(a)[i] If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered

by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(3[e]) Upon approval of the LTD claim:

(a[i]) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b[ii]) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c[iii]) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d[iv]) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e[v]) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(4[2]) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(5[3]) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

~~(b) After six months of cumulative absence from or inability to perform the regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head.~~

(6[4]) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

(7[5]) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g[a]) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h[b]) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

~~(e) An employee may not receive donated leave until all individually accrued leave is used.~~

~~(d) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.~~

~~(e) Employees using donated leave may not work a second job without written consent of the agency head.~~

]

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations

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

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 34-43-103; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14; ~~67-19-14.2; 67-19-14.4; 67-19-14.5~~; 39-3-1;

Human Resource Management,
Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38459

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to better reflect the actual time frame worked in different positions. Employees are not required to take a 30-minute unpaid lunch. Managers need to approve excess hours.

SUMMARY OF THE RULE OR CHANGE: The changes: requiring employees to obtain management approval to either acquire or use excess hours; incorporate Subsection R477-8-5(c) as part of Subsection R477-8-5(b); makes unpaid lunch discretionary; and changes "work week" to "work period".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-8. Working Conditions.

R477-8-1. Work ~~Period~~ Week.

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement

weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

- (a) establish a written policy governing telecommuting;
- (b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;
- (c) not allow participating employees to violate overtime rules;
- (d) not compensate for normal commute time; and
- (e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day ~~shall~~ may include a minimum of 30 minutes noncompensated lunch period, ~~[unless otherwise authorized by management]~~ at the discretion of agency management.

- (a) Lunch periods may not be used to shorten a work day.
- (2) An employee may take a 15 minute compensated break period for every four hours worked.
 - (a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.
 - (3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.
 - (a) Participating agencies shall have a written policy regarding exercise release time.
 - (b) Work time exercise that is a bona fide job requirement is not subject to this section.
 - (4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.
 - (5) Reasonable daily noncompensated break periods, as requested by the employee, shall be granted for the first year following the birth of a child so that the employee may express breast milk for her child. A private location, other than a restroom, shall be provided.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

- (1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:
 - (a) prior supervisory approval for all overtime worked;
 - (b) recordkeeping guidelines for all overtime worked;
 - (c) verification that there are sufficient funds in the budget to compensate for overtime worked.
- (2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

- (i) transferred from one agency to a different agency; or
 - (ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.
- ~~[(e) The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.]~~

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current

overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) DHRM shall establish the limit on compensatory time earned by an FLSA exempt employee.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(e) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(f) Schedule AB employees may not be compensated for compensatory time except with time off.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time;

or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) ~~[Agency management shall approve the accrual of excess hours before the work is performed]~~An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use~~[Agency management may deny the use of]~~ any leave time, other than holiday and jury leave, that results in the accrual of~~[an employee accruing]~~ excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under the criteria of the Americans with Disabilities Act Amendments Act of 2008 (42 U.S.C.A. 12101). This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions.

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment

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

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

**Human Resource Management,
Administration
R477-9
Employee Conduct**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38460

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to more accurately reflect actions taken for noncompliance with the rule governing employees conduct; to comply with federal law changes to the Hatch Act; and to better reflect conflicts of interest laws.

SUMMARY OF THE RULE OR CHANGE: The changes: replace "corrective action, performance improvement plan or discipline" with "administrative action"; revise the limits on those state employees who can run for political office; renumber to clarify; and change the rule so employee must disclose outside employment regardless of the type of employment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-7-2 and Section 67-19-19 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to

write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 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:

♦ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-9. Employee Conduct.

R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, time, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or other intoxicant, including use of illicit drugs, nonprescribed controlled substances, and misuse of volatile substances, shall be subject to ~~[corrective action or discipline]~~ administrative action in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-202 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to ~~[a performance improvement plan or discipline]~~ administrative action under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment may not interfere with an employee's performance.

(b) Outside employment may not conflict with the interests of the agency nor the State of Utah.

(c) Outside employment may not give reason for criticism nor suspicion of conflicting interests or duties.

(d) An employee shall notify agency management in writing ~~of [if the] outside employment, [has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.]~~

(e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(f) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities may not interfere with an employee's performance, the interests of the agency nor the State of Utah.

(b) Outside activities may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use a state position; any influence, power, authority or confidential information received in that position; nor state time, equipment, property, or supplies for private gain.

(3) An employee may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order, 1/26/2010, nor accept other compensation that might be intended to influence or reward the employee in the performance of official business.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the

employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) As modified by the Hatch Modernization Act of 2012, 5 U.S.C. Section 1502(a)(3), [The]the federal Hatch Act restricts the political activity of state government employees whose [work in connection with federally funded programs.]salary is 100% funded by federal loans or grants.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

~~(e)~~(2) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

~~(+)~~(a) The agency head shall consult with DHRM.

~~(+)~~(b) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

~~(+)~~(c) Employees in violation of section R477-9-4(1)(c) may be disciplined up to dismissal.

~~(+)~~(3) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

~~(+)~~(a) If it is determined that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

~~(2)~~(4) Any ~~[state]career service~~ employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office.~~[An employee may not use annual leave while serving in a political office.]~~

~~(3)~~(5) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

~~(4)~~(6) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Reporting Protections.

(1) Under Section 67-21-9, an agency may not adversely affect the employment conditions of an employee who communicates in good faith, and in accordance with statute:

- (a) waste or misuse of public property, manpower, or funds;
- (b) gross mismanagement;
- (c) unethical conduct;

- (d) abuse of authority; or
- (e) violation of law, rule, or regulations.

R477-9-6. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions shall be met before withholding of salary may occur:

(i) The debt shall be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-7. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-8. Personal Blogs and Social Media Sites.

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

- (a) claim to represent the position of the State of Utah or an agency;
- (b) post the seal of the State of Utah, or trademark or logo of an agency;
- (c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or
- (d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

R477-9-9. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

Date of Enactment or Last Substantive Amendment: ~~July 1, 2013~~ **2014**

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19; 5 U.S.C. Section 1502(a)(3)

Human Resource Management,
Administration
R477-10-1
Performance Evaluation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38461
FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make the rule easier to read and to understand the intent of the rule.

SUMMARY OF THE RULE OR CHANGE: The change moves Subsection R477-10-1(1)(d) under (2) as subsection (a). Also changes wording to remove redundancies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:
◆ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
◆ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State St, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-10. Employee Development.****R477-10-1. Performance Evaluation.**

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. The Executive Director, DHRM, may authorize exceptions to the use of UPM and this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) Performance management systems shall satisfy the following criteria:

(a) Agency management shall select an overall performance rating scale.

(b) Performance standards and expectations for each employee shall be specifically written in a performance plan.

(c) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in the performance plan.

~~[(a)](d) An employee shall have the right to include written comments pertaining to the evaluation with the employee's performance evaluation.~~

(2) Each fiscal year a state employee shall receive a performance evaluation.

~~(a) An employee shall have the right to include written comments pertaining to the employee's performance evaluation.~~

~~[(a)](b)~~ A probationary employee shall receive an additional performance evaluation at the end of the probationary period.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs

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

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6

Human Resource Management,
Administration
R477-14
Substance Abuse and Drug-Free
Workplace

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38462

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct the cited statute and address what to do with the drug testing records.

SUMMARY OF THE RULE OR CHANGE: The changes add a section on drug and alcohol test records; correct the cited statute; and altered numbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-34 and Section 67-19-35 and Section 67-19-38 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

♦ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State St, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-14. Substance Abuse and Drug-Free Workplace.

R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

(7) Employees are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty; and
- (e) follow up.

(8) Final candidates for transfer or promotion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(9) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol

testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(10) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(11) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(12) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Manual.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00; or

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-302.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

~~(7)~~(f) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

~~(8)~~(7) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

~~(9)~~(8) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. ~~[Policy Exceptions]~~Drug and Alcohol Test Records.

~~[The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).](1) A separate confidential file of drug and alcohol test results and documents related to the last chance agreements shall be maintained and stored in the agency human resource field office.~~

~~(2) Files shall be retained in accordance with the retention schedule.~~

R477-14-4. Policy Exceptions.

~~The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).~~

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

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

Notice of Continuation: November 4, 2011

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 67-19-35; 63G-2-3; 67-19-38

**Human Resource Management,
Administration
R477-15
Workplace Harassment Prevention**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38463

FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify that supervisors need to take additional training.

SUMMARY OF THE RULE OR CHANGE: Changes the title for Section R477-15-5 to specify which records. Adds language to include training for supervisors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments, because this rule only affects the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

♦ Katie Clayton by phone at 801-538-3080, by FAX at 801-538-3081, or by Internet E-mail at kclayton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State St, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-15. Workplace Harassment Prevention.

R477-15-1. Policy.

It is the State of Utah's policy to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, gender, age, disability, or protected activity or class under state and federal law.

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) An employee may be subject to discipline for workplace harassment, even if:

(a) the harassment is not sufficiently severe to warrant a finding of unlawful harassment, or

(b) the harassment occurs outside of scheduled work time or work location.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

R477-15-2. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

R477-15-3. Complaint Procedure.

Management shall permit individuals affected by workplace harassment, retaliation, or both to file complaints and engage in an

administrative process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) Individuals who feel they are being subjected to workplace harassment, retaliation, or both should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness, if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

R477-15-4. Investigative Procedure.

(1) Formal investigations shall be conducted by qualified individuals based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate action under Rule R477-11.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the findings shall be documented and the appropriate parties notified.

R477-15-5. Workplace Harassment Records.

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

R477-15-6. Training.

(1) Agencies shall ensure ~~their~~ employees receive training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by DHRM and the Division of Risk Management.

(b) After initial training all agencies shall ensure updated or refresher training is provided to employees every two years.

(c) Training shall be developed and provided by qualified individuals.

(d) Training records shall be maintained, including who provided the training, who attended the training and when they attended it.

KEY: administrative procedures, hostile work environment

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

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-; Governor's Executive Order on Prohibiting Unlawful Harassment,

Human Resource Management,
Administration
R477-101
Administrative Law Judge Conduct
Committee

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38464
FILED: 04/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to renumber subsections of the rule and clarify notice of the complaint procedure.

SUMMARY OF THE RULE OR CHANGE: The changes renumber the sections so that there is uniformity across all rule sections and require that agencies notify parties of the complaint procedure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19e-101

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments because the changes are simply renumbering with other small administrative changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

♦ Kurt Bradburn by phone at 801-538-3206, or by Internet E-mail at kbradburn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/22/2014 10:00 AM, Senate Bldg, Spruce Room, 420 N State St, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2014

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-101. Administrative Law Judge Conduct Committee.****R477-101-1. Authority and Purpose.**

This rule is enacted pursuant to Utah Code Section 67-19e-104, requiring the Department of Human Resource Management to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

R477-101-2. Definitions.

In addition to the terms defined in Utah Code Section 67-19e-102:

(1) "Administrative Law Judge" (ALJ) includes Hearing Officers employed or contracted by a state agency that meet the criteria described in Utah Code Section 67-19e-102(1)(a).

(2) "Chair" means the Executive Director, Department of Human Resource Management, or designee.

(3) "Code of Conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in Utah Code Section 67-19e-108.

(5) "Committee Meeting" means a proceeding at which a Complaint is presented to the Committee by the investigator. Respondent ALJ shall also have the opportunity to appear and speak regarding the Complaint and its allegations.

(6) "Complaint" means a written document filed with the Department pursuant to Utah Administrative Code R477-101-401 alleging Misconduct by an ALJ.

(7) "Department" means the Department of Human Resource Management.

(8) "Final Agency Action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.

(9) "Full investigation" means that portion of an investigation where the Respondent ALJ may respond, in writing, to specific allegations identified in a Complaint. A Full Investigation may also include, but is not limited to: examination by the Investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, Respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides responsible basis for action or a decision.

(11) "Interested Party" means an individual or entity who participated in an event or proceeding giving rise to a Complaint against the Respondent ALJ.

(12) "Investigator" means a person employed by the department to perform investigations mandated under Utah Code Section 67-19e-107 and present information at the Committee Meeting.

(13) "Misconduct" means a violation of the Code of Conduct or Utah Code Section 67-19e-101 et seq.

(14) "Preliminary Investigation" means that portion of an investigation conducted by the Department upon receipt of a

Complaint. A Preliminary Investigation may include, but is not limited to: examination of documents, correspondence, interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a Complaint is filed.

R477-101-3. Jurisdiction.

(1) Administrative Law Judges. The Committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding Complaints filed against ALJs.

(2) Former ALJs. The Committee has continuing jurisdiction over former ALJs regarding allegations that Misconduct occurred during service as an ALJ if a Complaint is received before the ALJ's appointment concludes.

R477-101-4. Records Classification and Retention.

(1) Records prepared by and for the Committee, including all Complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Utah Code Section 63G-2-305.

(2) Committee records shall be maintained by the department for a period of three years following the conclusion of any Committee activity.

R477-101-~~201~~5. Committee.

(1) The Executive Director or designee shall serve as Chair of the Committee, and appoint four Executive Directors or their designees to serve on the Committee.

(2) Only Executive Directors of agencies that employ or contract with ALJs may serve on the Committee.

(3) If a Department investigation establishes a Complaint requires further action, the Executive Director and Chair shall convene the Committee.

(4) An Executive Director of the agency that employs or contracts with the Respondent ALJ may not participate in a Committee proceeding involving the Respondent ALJ.

(5) After convening the Committee, the Department shall provide a copy of the Complaint and its investigative results to the Committee and the Respondent ALJ.

(6) Within 30 days of the date the Committee is convened on a complaint the Committee shall schedule a Committee Meeting. At the Committee Meeting the Respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a Complaint.

(7) Committee members may attend Committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the Chair.

(8) After consideration of all information provided at the Committee Meeting, the Committee shall dispose of the Complaint by issuing a decision or report with a recommendation to the agency containing:

(a) a brief description of the Complaint and the investigative results;

(b) findings, and;

(c) recommendations.

(9) Committee members shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

R477-101-~~202~~6. Duties of the Chair.

- (1) The Chair shall:
- (a) receive, acknowledge receipt of and review Complaints;
 - (b) notify complainants about the status and disposition of their Complaints,
 - (c) make recommendations to the Committee regarding further proceedings or the disposition of a Complaint;
 - (d) stay investigation(s) or committee proceedings pending Final Agency Action of the matter giving rise to the Complaint against the Respondent ALJ;
 - (e) maintain records of the Committee's operations and actions;
 - (f) compile data to aid in the administration of the Committee's operations and actions;
 - (g) prepare and distribute an annual report of the Committee's operations and actions;
 - (h) direct the operations of the Committee's office, and supervise other members of the Committee's staff;
 - (i) make available to the public the laws, rules, and procedures of the Committee and its operations;
 - (j) consider requests for extension of time periods and, upon a showing of Good Cause, grant such requests for a period not to exceed 20 days for each request.
- (2) Subject to the duty to direct and supervise, the Chair may delegate any of the foregoing duties to other members of the Committee's staff.

R477-101-~~301~~7. Code of Conduct.

- (1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.
- (2) In order to suit a specific agency need, an agency may make an addendum or modification to the Code of Conduct. Any such addendum or modification shall be specific to their agency. In addition, any addendum or modification to the Code of Conduct must be reviewed and approved by the Committee before being implemented. The Committee may be convened for the purpose of reviewing any proposed addendum or modification.

R477-101-~~401~~8. Filing Procedure.

- (1) Each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily available to parties, at the commencement of administrative proceedings.
- (~~1~~2) An individual who alleges a violation of the Code of Conduct or otherwise has a Complaint against an ALJ may file a timely Complaint with the Department. To be timely a Complaint must be in writing and filed with the Department within 20 working days of Final Administrative Action in the matter in which the individual is an Interested Party.
- (~~2~~3) Complaints filed with the Department are deemed filed on the date actually received by the Department. The Department shall date-stamp all Complaints on the date received. All filing and other time periods are based upon the Department's working days.
- (~~3~~4) Complaints must contain specific facts and allegations of Misconduct and must be signed by the person filing the Complaint or by the person's authorized representative. Complaints shall also contain the name, address, and telephone number of the

complainant, and the name, business address, and telephone number of the representative, if a party or person is being represented.

(~~4~~5) The Department will give written notice to both the complainant and Respondent ALJ when a Complaint is received.

R477-101-~~402~~9. Investigation.

- (1) Preliminary Investigation.
- (a) The Department shall review all timely filed Complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a Preliminary Investigation.
- (b) If the Preliminary Investigation determines that the Complaint is untimely, frivolous, without merit of, or if the Complaint merely indicates disagreement with the Respondent ALJ's decision, without further alleged Misconduct, the Complaint may be similarly dismissed without further action.
- (c) If, after a Preliminary Investigation is completed, there is a reasonable basis to find Misconduct occurred, the Investigator shall initiate a Full Investigation.
- (2) Full Investigation.
- Within ten days after a determination to conduct a Full Investigation is made, the Investigator shall notify the Respondent ALJ that a Full Investigation is being conducted. The notice shall:
- (a) inform the Respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;
 - (b) inform the Respondent ALJ that the investigation may be expanded if appropriate;
 - (c) invite the Respondent ALJ to respond to the Complaint in writing within 10 working days;
 - (d) include a copy of the Complaint, the Preliminary Investigation report(s), and any other documentation reviewed in determining whether to authorize a Full Investigation; and
 - (e) unless continued by the Chair, Full Investigations shall be completed within three months of the determination to conduct a Full Investigation.

R477-101-~~403~~10. Full Investigative Findings.

Results of the investigation shall be provided to the Chair, who shall determine whether to convene a Committee Meeting.

R477-101-~~501~~11. Notice.

- (1) If after review of the Full Investigative result and findings the Chair determines the Complaint is factually or legally insufficient to establish Misconduct, the Chair shall similarly dismiss the Complaint and take no further action.
- (2) If after review of the Full Investigative result and findings the Chair determines the Complaint requires further action, the Chair shall convene the Committee and order a Committee Meeting be scheduled.
- (3) After convening the Committee the Chair shall provide Respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the Committee Meeting. The Chair shall also provide the Respondent ALJ with a copy of the Complaint and the results of the Department's investigation.
- (4) Notice that a Committee has been convened and a Committee Meeting ordered shall be made by personal service or certified mail upon the Respondent ALJ or the Respondent ALJ's

representative. Service of all other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the Chair that a Committee has been convened the Respondent ALJ may provide the Committee a written response to the Complaint.

(6) After receipt of the Respondent ALJ's response or after expiration of the time to respond the Committee shall, in consultation with the ALJ, schedule a Committee Meeting. The Committee shall notify the ALJ in writing of the date, time, and place of the Committee Meeting. Unless continued for Good Cause, Committee Meetings shall be held within four months of the date a Committee is convened on a Complaint.

(7) No later than 20 days before the scheduled Committee Meeting the Chair shall provide the Respondent ALJ with copies of all documents proposed for use at the Committee Meeting or to be relied upon in making its report and recommendation.

(8) Respondent ALJ shall be entitled to representation at every stage of the Committee proceedings or the Committee Meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in Committee proceedings.

R477-101-[502]12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.

If the Respondent ALJ resigns or retires during the proceedings, the Committee shall determine whether to proceed or dismiss the proceedings.

R477-101-[503]13. Committee Meetings.

(1) The Chair shall rule on all motions or objections raised during a Committee Meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The Chair may limit the time allowed for the presentation of information, may bifurcate any and all issues to be considered, and may make any and all other rulings regarding any Committee proceeding or Committee Meeting.

(2) To hold a Committee Meeting there must be at least 3 members of the Committee present.

(3) The Respondent ALJ shall be permitted to present information to, make statements and produce witnesses for the Committee's consideration.

(4) Committee members may ask questions of any witness including the Respondent ALJ.

(5) Immediately following the conclusion of the Committee Meeting, the Committee shall deliberate and decide whether there is sufficient evidence the Respondent ALJ violated the Code of Conduct or otherwise engaged in Misconduct. Any such decision shall require a majority vote of the participating Committee members.

(6) Committee decisions shall be supported by a preponderance of the evidence.

(7) Within 30 days of the conclusion of the Committee Meeting, the Chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action(s), and shall forward the decision and recommendation to the Respondent ALJ and the agency head of the Respondent ALJ.

(8) After deliberation, if the Committee finds insufficient evidence or reason to determine Misconduct occurred, the complaint shall be dismissed.

R477-101-[504]14. Discipline.

(1) At any time after the commencement of a Full Investigation and before any Committee action, the ALJ may admit to any or all of the allegations in exchange for a stated sanction. The admission shall be submitted to the Committee for a recommendation.

(2) Any corrective and/or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or state rule(s) governing discipline.

R477-101-[505]15. Reinstatement of Proceedings.

(1) Reinstatement upon Request by Complainant.

(a) If a Complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

(c) A determination not to reinstate the Complaint is not reviewable.

(2) Reinstatement by the Chair.

(a) If the Committee dismisses a Complaint, the Chair may, at any time upon the receipt of newly discovered evidence, request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which the reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

R477-101-[601]16. Performance Standard.

(1) The following minimum performance standards shall apply to all ALJ's:

(a) The ALJ shall have no more than one agency disciplinary action or one Committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) The ALJ shall receive an average score of no less than 65% on each survey category as provided in Utah Code 67-19e-106.

(2) For any question that does not use the numerical scale, the Committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by Utah Code Section 67-19e-105.

R477-101-[602]17. Performance Surveys.

(1) Initial performance surveys shall be conducted by the department beginning January 1, 2014, based on current ALJ's assignment effective date. Current ALJ's will be divided into four approximately equal groups based on length of tenure in the ALJ position. The most tenured group will be surveyed first, with the next tenured group being surveyed beginning January 1 of the following calendar year, until the four-year survey cycle is established.

(2) Survey respondents may include:

(a) Attorneys who have appeared before the administrative law judge as counsel in the proceeding;

(b) Staff who have worked with the administrative law judge; and

(c) Any other person that has appeared on record before the administrative law judge, including but not limited to pro se parties and witnesses, in the proceeding.

(2)3) Survey results shall be maintained by the department and shall not be maintained in the ALJ's personnel file.

(3)4) Survey results shall be made available to the ALJ's supervisor for consideration in completing annual performance evaluations.

KEY: administrative law judges, conduct committee

Date of Enactment or Last Substantive Amendment: [January 14, 2014]

Authorizing, and Implemented or Interpreted Law: 67-19e-101 through 67-19e-109

Human Services, Substance Abuse and Mental Health

R523-22

Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38451

FILED: 04/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update language, add guidance for victim impact panels, add more specificity to the reporting requirements, provide additional guidance, and strengthen the requirements for instructor qualifications.

SUMMARY OF THE RULE OR CHANGE: The changes are: 1) in the catchline and throughout the rule the term "Program" is replaced with "Agency", "Instructor" or "Provider"; 2) throughout the rule the term "offender" was replaced by "participant"; 3) in Section R523-22-2, the terms "Participant", "Provider", and "Victim Impact Panel" are defined; 4) in Section R523-22-3, the certification requirements for Victim Impact Panels are provided. Requirements for action when an instructor is arrested or convicted are provided; 5) changes to Sections R523-22-5 and R523-22-6 include restrictions to instructor certification and recertification if the instructor has been convicted; and 6) Section R523-22-10 is a new section added to provide standards for Victim Impact Panels.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 17-43-301 and Section 41-6a-502 and

Section 41-6a-510 and Section 41-6a-528 and Section 62A-15-201 and Section 63G-4-302 and Section 73-18-12

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No anticipated cost or savings to the state budget because this doesn't change the duties of the program manager.

♦ **LOCAL GOVERNMENTS:** There are not any anticipated cost or savings to local government because the changes only impact the providers and the instructors.

♦ **SMALL BUSINESSES:** While these changes impact small businesses, they don't impact them financially. They just give clarity on the fact that they can use the DVDs that are provided for victim impact panels and helps them understand the reporting deadlines. It also gives them guidance on who they can use for instructors.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are not any anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the changes only impact the providers and the instructors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are not any anticipated compliance costs for affected persons. These changes are just to give clarity and more guidance on what they are already doing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While these changes impact small businesses, they don't impact them financially. The changes just give clarity and more guidance on what they are already doing.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.**R523-22. Utah Standards for Approval of Alcohol and Drug Educational [Programs]Providers and Instructors for Court-Referred DUI Offenders.****R523-22-1. Purpose and Statutory Authority.**

1. Purpose. These rules prescribe standards for approval of [programs]Providers and certification of [i]nstructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections [41-6-43]41-6a-510, [41-6-44]41-6a-502, [41-6-45]41-6a-528, and 73-18-12[through 73-18-12.2].

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections [41-6-44]41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501[-]through 503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the [offender]participant examine the behavior [which resulted in his]that led to the arrest, (b) assist [him]the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon [him]the participant the severity of the DUI offense.

R523-22-2. Definitions as Used in These Standards.

1. "DUI Educational Program" herein referred to as [p]Program is an instructional series [operated]offered by a licensed substance abuse treatment [program]Provider agency which satisfies the standards established by the Division.

2. "Provider" is a licensed substance abuse treatment agency that has been approved to offer DUI Education.

3. "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections [41-6-43]41-6a-510, [41-6-44]41-6a-502, [41-6-45]41-6a-528, and 73-18-12[through 73-18-12.2].

[3]4. "Certificate" is a written authorization issued by the Division to indicate that the [Program]Provider agency has been found to be in compliance with these Division standards and may offer DUI Education.

[4]5. "Offender" is an individual convicted of violating Section 41-6-43, 41-6-44, 41-6-45, or 73-18-12 through 73-18-12.2.

5. "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

6. "Instructor" is a person employed by a Provider who has been certified by the Division to instruct [in educational programs]the state approved education course for court-referred [offenders]participant convicted of DUI.

7. "Participant" is a person attending DUI Education classes as a result of a DUI conviction or arrest. This person has received a screening which indicated Education is appropriate.

8. "Victim Impact Panel". A presentation designed to reflect the principles taught in the educational program that helps participants understand the potential impact on others of driving under the influence.

R523-22-3. Certification Requirements for DUI Educational [Programs]Providers.

1. In order to operate, a potential DUI Educational [Program]Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification [will]shall require [that the program provide, among other things]the following:

a. [a]A brief description and purpose of [program]the agency, and an[plus] explanation of [program]the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

b. [t]The geographical area to be served;

c. [t]The ownership and person or group responsible for [program]agency operation;

d. [t]The location and time that DUI classes [are]would normally be held;

e. [a]A list of instructors employed by the [program]agency; and

f. [a]A copy of their substance abuse treatment license.

g. An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

h. Copies of all materials, i.e. presentations, workbooks, written documents, photographs used in the presentation or distributed to participants during victim impact panels shall be submitted to the Division for approval prior to use.

i. A written plan that describes goals, objectives and format of in person victim impact panels to the Division for approval prior to use.

3. A DUI Educational [Program]Provider shall also:

a. [e]Ensure that [offenders]participant receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;

b. [a]Allow no more than 25 persons, including [offenders]participant and others to a class;

c. [f]Follow the recommendations of the screening which has been provided;

d. [e]Ensure that screenings are conducted by staff from a licensed treatment [program]agency who have been trained in administering the screening tool;

e. [r]Report the number of [offenders]participant completing the DUI Educational Program to the Division at least every quarter;

f. [h]Have policies ensuring confidentiality of information maintained on [offenders]participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;

g. [e]Ensure that [i]nstructors follow the Division-approved curriculum;

h. [h]Have available for review a copy of the [program]Provider's charter, constitution, or bylaws;

i. [o]Outline the eligibility criteria for admission to the program, including the screening tool used;

j. [e]Ensure that all [i]nstructors employed by the [program]Provider have completed the Division required DUI training/certification;[and]

k. Inform the Division of any licensing or address change;

_____. 1. ~~[e]~~ Comply with all applicable local, state and federal laws and regulations.

_____. m. Ensure that none of the Instructors are on probation or parole for any offense.

_____. p. Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years.

_____. q. Notify the Division in writing within 30 days if any Instructor has been arrested for any reason; and

_____. 4. Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants.

[4]5. An ~~[offender]~~ participant's participation in the DUI Educational Program shall not be a substitute for treatment ~~[required by the courts]~~ as determined by an assessment.

[5]6. The Division shall issue the ~~[program]~~ Provider a certificate after determination has been made that the applicant is in compliance with these standards.

[6]7. The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-22-4. On-site Survey of ~~[Program]~~ Provider.

1. After a review of the application, a site review ~~[will]~~ may be scheduled by a designated representative of the Division. With each initial application and application for renewal the applicant agrees, as a condition of ~~[program]~~ Provider certification, to permit representative(s) of the, Division, and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws.

2. The DUI Educational ~~[Program]~~ Provider also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

3. Review Procedures. Within 30 days after completion of ~~[the]~~ an on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-22-5. Instructor Certification.

1. By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

a. All ~~[i]~~ Instructors employed by any DUI Educational ~~[Program]~~ Provider shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational ~~[Program]~~ Provider.

b. All ~~[i]~~ Instructors shall attend and complete the requirements of the ~~[i]~~ Instructor training sponsored by the Division.

c. Requirements in A and B above shall be complete and verifiable.

d. The ~~[i]~~ Instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a DUI Educational ~~[Program]~~ Provider.

e. The ~~[i]~~ Instructor ~~[s must]~~ agrees to attend all required DUI training sessions sponsored or approved by the Division.

_____. f. An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

_____. g. An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

_____. h. A Certified Instructor shall notify the Division within 30 days of any arrest.

R523-22-6. Recertification of Instructors.

1. An ~~[i]~~ Instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The ~~[i]~~ Instructor must sign a register at those training sessions which have been set aside for DUI ~~[i]~~ Instructor recertification.

2. It is the responsibility of the ~~[i]~~ Instructor to notify the Division immediately of any address change.

_____. 3. An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

_____. 4. An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

_____. 5. If a current Instructor is arrested, he or she has 30 days to report the arrest to the Division.

[3]6. The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-22-7. Corrective Action for a ~~[Program]~~ Provider or an Instructor.

1. If the Division becomes aware that a DUI education ~~[program]~~ Provider or an ~~[i]~~ Instructor is in violation of these standards, it shall proceed with the following steps:

a. Within 30 days of becoming aware of the violation, the Division shall notify the ~~[program]~~ Provider or the ~~[i]~~ Instructor in writing of the area(s) of noncompliance.

b. Within 30 days of receiving notification of violation, the program or the ~~[i]~~ Instructor shall submit a written plan to the Division for achieving compliance.

c. If the written plan is not accepted as satisfactory by the Division within 30 days the ~~[program]~~ Provider or the ~~[i]~~ Instructor shall be notified that they have been suspended until compliance is achieved.

d. A ~~[program]~~ Provider or an ~~[i]~~ Instructor must cease conducting any DUI Educational ~~[Program]~~ Provider until the suspension is lifted.

e. If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the ~~[program]~~ Provider or ~~[i]~~ Instructor's certification.

R523-22-8. Revocation of a ~~[Program]~~ Provider's or an Instructor's Certification.

1. The Division shall revoke the certification of a ~~[program]~~ Provider or an ~~[i]~~ Instructor for the following reasons:

a. If the ~~[program]~~ Provider or the ~~[i]~~ Instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

b. If the ~~[program]~~ Provider or the ~~[i]~~ Instructor continues to ~~[conduct]~~ provide any DUI Education ~~[at Program]~~ during the period of suspension, or

c. If any ~~[program]~~ Provider or ~~[i]~~ Instructor receives more than two notices of noncompliance with these standards in a one-year period.

2. If any [program]Provider or [i]Instructor's certification is revoked, they may not reapply for recertification for a period of six months.

R523-22-9. Redress Procedures for Programs or Instructors.

1. Any [program]Provider or [i]Instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the [program]Provider or the [i]Instructor in writing of the decision as required under [UCA] Section [63G-4-302] and [UACA] R[503-2]497-100-1 through R[503-2-2]497-100-10.

2. If they so choose, the [program]Provider or the [i]Instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under [UCA]Section [63G-4-302].

R523-22-10. Standards for Victim Impact Panels.

1. Victim impact panels may be conducted in person or by use of filmed versions approved by the Division.

2. Providers shall ensure that victim impact panels are available in English, Spanish and other languages as needed.

3. Providers shall limit attendance at victim impact panels to no more than 25 participants.

KEY: DUI programs, certification of instructors

Date of Enactment or Last Substantive Amendment: ~~July 3, 2001~~2014

Notice of Continuation: June 18, 2012

Authorizing, and Implemented or Interpreted Law: ~~41-6-44~~41-6a-502; 41-6a-510; 41-6a-528; 62A-15-201; 63G-4-302; 17-43-301; 73-18-12~~1-2~~

Natural Resources, Wildlife Resources
R657-60
 Aquatic Invasive Species Interdiction

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38477

FILED: 05/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is purposed to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

SUMMARY OF THE RULE OR CHANGE: In order to interdict the spread of Dreissena mussels consistent with Title 23, Chapter 27 "Aquatic Invasive Species Act", the Division of Wildlife Resources (DWR) recommends the establishment of

inspection stations consistent with Section 23-27-301. This rule amendment outlines the proposed process for conducting an inspection station.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19 and Section 23-27-401

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: DWR determines that these amendments do not create a cost impact to the state budget or DWR's budget. However, the 2014 Utah Legislative Session appropriated \$245,000 to aid in the implementation costs associated with this rule.

◆ LOCAL GOVERNMENTS: This rule 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 rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner. Small businesses will not be impacted.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this rule may create a cost impact to individuals who own water vessels and boat in infested waters, because they would be required to decontaminate the conveyance.

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 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-60. Aquatic Invasive Species Interdiction.

R657-60-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-13. Inspection Stations.

(1) Inspection stations may be established for administrative purposes to interdict the spread of Dreissena mussels consistent with Utah Code Title 23, Chapter 27 "Aquatic Invasive Species Act," and this rule.

(2) The Division may establish inspection stations at locations authorized under Section 23-27-301 where:

(a) there is a high probability of intercepting conveyances or equipment transporting Dreissena mussels;

(b) there is typically a high level of boat and trailer traffic; or

(c) inspection of conveyances or equipment will provide increased protection against the introduction of Dreissena mussels into a water body that is not classified as infested, suspected, or detected under R657-60-2.

(3) Inspection stations shall have adequate space for conveyances or equipment to be stopped, inspected, and if necessary, decontaminated, without interfering with the public's use of highways or presenting a safety risk to the public.

(4) Inspection stations shall have adequate signage providing the public:

(a) notice that the inspection station is open and operational;

(b) notice that all persons transporting conveyances or equipment must stop at the inspection station and submit their conveyance and equipment for inspection; and

(c) an adequate opportunity to safely stop at the inspection station.

(5) Any person transporting a conveyance or equipment is required to stop at an inspection station during its hours of operation and submit that conveyance or equipment to the Division for inspection.

(6) The Division shall conduct an inspection of a conveyance or equipment that is stopped at an inspection station as follows:

(a) Division personnel will determine whether the conveyance or equipment has been in an infested, suspected, or detected water body within the past 30 days.

(b) If the conveyance or equipment has not been in an infested, suspected, or detected water body within the past 30 days, the Division will:

(i) conduct a brief visual inspection of the conveyance or equipment to ensure that there are no visible Dreissena mussels;

(ii) provide educational materials regarding aquatic invasive species risks and regulations in Utah; and

(iii) provide a certificate of inspection to the person in possession of the conveyance or equipment.

(c) If the conveyance or equipment has been in an infested, suspected, or detected water body within the past 30 days, the Division will:

(i) verify all water is drained from the conveyance or equipment, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment;

(ii) verify that the surface of the conveyance or equipment is free of Dreissena mussels, shelled organisms, fish, plants, and mud; and

(iii) verify that the conveyance or equipment has been or will be decontaminated as defined in R657-60-2(b) before launching in a Utah water body.

(d) The Division may require professional decontamination of conveyances or equipment that have been in an infested, suspected, or detected water within the past 30 days and failed to comply with the draining and cleaning requirements established in R657-60-5(3).

(7) The Division may issue a certification of inspection and decontamination to persons who complete inspections and any applicable decontamination at an inspection station.

(8) Inspection stations shall be operated in a manner that minimizes the length of time of an inspection while ensuring that conveyances are free from the presence of Dreissena mussels.

KEY: fish, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: ~~March 11, 2014~~

Notice of Continuation: August 5, 2013

Authorizing, and Implemented or Interpreted Law: 23-27-401; 23-14-18; 23-14-19

Technology Services, Administration
R895-7
 Acceptable Use of Information
 Technology Resources

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38470

FILED: 04/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Information technology resources are provided to state employees to assist in the efficient day to day operations of state agencies. The change to this rule clarifies responsibility of employees to ensure security of state's information technology resources.

SUMMARY OF THE RULE OR CHANGE: In Subsection R895-7-4(4)(a), replace the word "management" with "data owner", and adds Subsection R895-7-4(4)(l).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-206

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget, as this change will not affect any processes performed by the state.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government, as this change will not affect any requirements processes performed by local government.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses, as this change will not affect any requirements processes performed by small businesses.
- ◆ **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, as this change will not affect any requirements processes performed by other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons, as this change will not affect processes performed by affected persons.

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

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

TECHNOLOGY SERVICES
ADMINISTRATION
ROOM 6000 STATE OFFICE BUILDING
450 N STATE ST
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Mark VanOrden, Executive Director and CIO

R895. Technology Services, Administration.

R895-7. Acceptable Use of Information Technology Resources.

R895-7-1. Purpose.

Information technology resources are provided to state employees to assist in the efficient day to day operations of state agencies. Employees shall use information technology resources in compliance with this rule.

R895-7-2. Application.

All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education and the Board of Regents and institutions of higher education, shall comply with this rule.

R895-7-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Utah Technology Governance Act, Utah Code, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code.

R895-7-4. Employee and Management Conduct.

(1) Providing IT resources to an employee does not imply an expectation of privacy. Agency management may:

(a) View, authorize access to, and disclose the contents of electronic files or communications, as required for legal, audit, or legitimate state operational or management purposes;

(b) Monitor the network or email system including the content of electronic messages, including stored files, documents, or communications as are displayed in real-time by employees, when required for state business and within the officially authorized scope of the person's employment.

(2) An employee may engage in incidental and occasional personal use of IT resources provided that such use does not:

(a) Disrupt or distract the conduct of state business due to volume, timing, or frequency;

(b) Involve solicitation;

(c) Involve for-profit personal business activity;

(d) Involve actions, which are intended to harm or otherwise disadvantage the state; or

(e) Involve illegal and/or activities prohibited by this rule.

(3) An employee shall:

(a) comply with the Government Records Access and Management Act, as found in Section 63G-2-101 et seq., Utah Code, when transmitting information with state provided IT resources.

(b) Report to agency management any computer security breaches, or the receipt of unauthorized or unintended information.

(4) While using state provided IT resources, an employee may not:

(a) Access private, protected or controlled records regardless of the electronic form without ~~management~~ data owner authorization;

(b) Divulge or make known his/her own password(s) to another person;

(c) Distribute offensive, disparaging or harassing statements including those that might incite violence or that are based on race, national origin, sex, sexual orientation, age, disability or political or religious beliefs;

(d) Distribute information that describes or promotes the illegal use of weapons or devices including those associated with terrorist activities;

(e) View, transmit, retrieve, save, print or solicit sexually-oriented messages or images;

(f) Use state-provided IT resources to violate any local, state, or federal law;

(g) Use state-provided IT resources for commercial purposes, product advertisements or "for-profit" personal activity;

(h) Use state-provided IT resources for religious or political functions, including lobbying as defined according to Section 36-11-102, Utah Code, and rule R623-1;

(i) Represent oneself as someone else including either a fictional or real person;

(j) Knowingly or recklessly spread computer viruses, including acting in a way that effectively opens file types known to spread computer viruses particularly from unknown sources or from sources from which the file would not be reasonably expected to be connected with;

(k) Create and distribute or redistribute "junk" electronic communications, such as chain letters, advertisements, or unauthorized solicitations[-];

(l) Knowingly compromise the confidentiality, integrity or availability of the State's information resources.

(5) Once agency management determines that an employee has violated this rule, they may impose disciplinary actions in accordance with the provisions of DHRM rule R477-11-1.

KEY: information technology resources, acceptable use

Date of Enactment or Last Substantive Amendment: [June 8, 2004]2014

Notice of Continuation: April 15, 2014

Authorizing, and Implemented or Interpreted Law: 63F-1-206

Transportation, Motor Carrier R909-19

Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38449

FILED: 04/18/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to increase tow storage fees, and modify fuel surcharge rates, which will facilitate at least a 10% increase for tow truck motor carriers.

SUMMARY OF THE RULE OR CHANGE: The non-consent police-generated tow rate for storage will increase by \$15 for

inside and outside storage of all vehicles. A modification to the fuel surcharge changes the rate from 10% every 0.50 increase to a 5% increase every 0.25 starting at \$3.25 for the price of fuel. The rule change also clarifies the limits of liabilities required in Section R909-19-5.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 72-9-603(7)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendments involve no expenditure of state budget funds. The proposal would change the rates paid by owners of towed vehicles for storage and a fuel surcharge. No additional state funds would be required for enforcement or any other purpose.

◆ **LOCAL GOVERNMENTS:** The same basis for concluding that there will be no impact on state budget funds applies to any expenditure of local government funds. The setting of rates for tow truck operations is entrusted by the Legislature to the Department of Transportation and is not a function in which local governments become involved.

◆ **SMALL BUSINESSES:** Because tow truck operators, many of whom are small businesses, will be able to increase rates and fuel surcharges within the range contained in the amendments, they may be expected to receive a modest increase in revenue. This will enable operators to better recoup costs through increased rates and surcharges. The total impact is unknown as it depends on the number of tows performed, which is not known ahead of time.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated non-fiscal impacts or burdens. If adopted, the proposed amendment would result in slightly higher tow charges for vehicle owners whose vehicles are towed by non-consent, police-generated requests. It is anticipated that this charge would be encountered only rarely (if ever) by any individual owner and would not constitute a significant fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The owner and/or the insurer of a towed vehicle will experience a 10% increase in the cost of storage of a towed vehicle, and will also be subject to the new fuel surcharge rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Tow truck motor carriers are already required to retain documentation of the cost of fuel and storage on tow receipts, so there would be no additional non-fiscal impact.

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

TRANSPORTATION

MOTOR CARRIER

CALVIN L RAMPTON COMPLEX

4501 S 2700 W

SALT LAKE CITY, UT 84119-5998

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
- ◆ Stephen Sorenson by phone at 801-965-4197, by FAX at 801-965-4338, or by Internet E-mail at ssorenson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 09/12/2014

AUTHORIZED BY: Carlos Braceras, Executive Director

R909. Transportation, Motor Carrier.**R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.****R909-19-1. Authority.**

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency Moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

([4]5) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

([5]6) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

([6]7) "Life-Essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

([7]8) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

([8]9) "Non-Consent Non Police Generated Tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to

operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

([9]10) "Normal Office Hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

([10]11) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

([11]12) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

([12]13) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

([13]14) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repossession towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

([14]15) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed Vehicle Classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light Duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium Duty" means any towed vehicle with a GVWR between 10,001 and 26,000 pounds;

(iii) "Heavy Duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

([15]16) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers

within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Non-consent police generated tows performing emergency moves are required to maintain at least \$750,000 of liability insurance. All other non-consent police generated tows are required to maintain at least \$1,000,000 of liability insurance.

(2) Tow Truck Motor Carriers performing non-consent non-police generated tows or consent tows are required to maintain at least \$1,000,000 of liability insurance, ~~plus the~~

(3) All Tow Truck Motor Carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(~~3~~4) Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to the Tow Truck Motor Carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated and non-consent non-police generated tows conducted by Tow Truck Motor Carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by 41-6a-1406(11).

(a) Tow Truck Motor Carriers may charge an administrative fee up to but not exceeding \$30.00 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles.

(2) Tow Truck Motor Carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a Tow Truck Motor Carrier has met this requirement if they can provide proof that a [~~certified~~] letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard

motor is registered, within two business days requesting the needed information to send the letter.

(3) If required notifications to the Division of Motor Vehicles and local law enforcement is not completed as required by Sections 41-6a-1406 and 72-9-603, the Tow Truck Motor Carrier or operator may not collect any fees associated with the removal or begin charging storage fees as authorized under Sections 41-6a-1406 and 72-9-603 until the removal has been reported to the Motor Vehicle Division and the local law enforcement agency.

(4) If notification to the last known owner and lien holder is not made as required by this rule, the Tow Truck Motor Carrier may be subject to penalties as outlined in this rule.

(5) The tow truck motor carrier or the tow truck driver must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(6) The Utah Consumer Bill of Rights Regarding Towing shall contain the following language and information:

(a) The consumer has the right to know they are being charged an appropriate fee. Towing fees are established by the Utah Department of Transportation under Utah Code Annotated Section 72-9-603 and Utah Administrative Code R909-19. <http://www.rules.utah.gov/publicat/code/r909/r909-019.htm>

(i) Non-Consent Police Generated Tow.

(A) Light duty vehicle: Tow fee - up to \$145.00 per hour, per unit; Storage fee - up to \$[~~25~~]40.00 per day for outside storage or \$[~~30~~]45.00 per day for inside storage; Administrative fee - up to \$30.00; Fuel Surcharge - percentage of tow fee. See R909-19-14 for specific fuel surcharge rate.

(B) Medium duty vehicle: Tow fee - up to \$240.00 per hour, per unit; Storage fee - up to \$[~~45~~]60.00 per day for outside storage or \$[~~70~~]85.00 per day for inside storage; Administrative fee - up to \$30.00; Fuel Surcharge - percentage of tow fee. See R909-19-14 for specific fuel surcharge rate.

(C) Heavy duty vehicle: Tow fee - up to \$300.00 per hour, per unit; Storage fee - up to \$[~~45~~]60.00 per day for outside storage or \$[~~70~~]85.00 per day for inside storage; Administrative fee - up to \$30.00; Fuel Surcharge - percentage of tow fee. See R909-19-14 for specific fuel surcharge rate.

(D) Light, medium and heavy duty vehicles: An additional 15% per hour may be charged for the tow fee if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(ii) Non-Consent Non-~~Police~~ Generated Tow.

(A) Light duty vehicle: Tow fee - up to \$145.00 per tow; Storage fee - up to \$25.00 per day for outside storage or \$30.00 per day for inside storage; Administrative fee - up to \$30.00; Fuel Surcharge - percentage of tow fee. See R909-19-14 for specific fuel surcharge rate.

(B) Medium duty vehicle: Tow fee - up to \$240.00 per tow; Storage fee - up to \$45.00 per day for outside storage or \$70.00 per day for inside storage or \$100.00 per day for outside storage of vehicles used in the transportation of materials found to be hazardous;

Administrative fee - up to \$30.00; Fuel Surcharge - percentage of tow fee. See R909-19-14 for specific fuel surcharge rate.

(C) Heavy duty vehicle: Tow fee - up to \$300.00 per tow; Storage fee - up to \$45.00 per day for outside storage or \$70.00 per day for inside storage or \$100.00 per day for outside storage of vehicles used in the transportation of materials found to be hazardous; Administrative fee - up to \$30.00; Fuel Surcharge - percentage of tow fee. See R909-19-14 for specific fuel surcharge rate.

(D) Light, medium and heavy duty vehicles: An additional 15% per hour may be charged for the tow fee if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) All non-consent tows must be reported to the Utah Motor Vehicle Division via the Impound Vehicle System (IVS) before payment can be collected as per Utah Code annotated Sections 41-6a-1406 and 72-9-603. To verify that the required IVS reporting was completed by the tow truck company visit <http://www.tow.utah.gov>.

(i) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(c) The tow truck motor carrier, driver(s) and vehicle(s) must comply with the Federal Motor Carrier Safety Regulations at <http://www.udot.utah.gov> by clicking on the Motor Carrier link and then the safety and compliance link.

(d) A consumer has the right to file a complaint alleging:

(i) Overcharges:

(ii) Inadequate certification for the driver, truck or company, and;

(iii) Violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated or Utah Administrative Code.

(e) Complaints may be filed online with the Utah Department of Transportation at <http://www.udot.utah.gov>. Click on the Motor Carrier Division tab, Comments or Complaints tab, and click on the Tow Truck Complaint form.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Driver Certification.

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program;

(iv) Utah Safety Council;

(v) North American Towing Academy; or

(vi) Other driver testing certification programs approved by the Department to meet certification requirements, however, the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow Truck Motor Carriers shall ensure that all drivers are:

(i) properly trained to operate tow truck equipment;

(ii) licensed, as required under Sections 53-3-101, through 53-3-909 Uniform Driver License Act; and

(iii) properly certified.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall be inspected and certified biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at <http://www.udot.utah.gov/index.php/m=c/tid=396> or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT ~~safety~~ certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle inspection certification shall be kept in the vehicle files and be available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification.

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge Tow Truck Motor Carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle; and

(i) start and end time with total hours for services provided.

R909-19-11. Maximum Towing Rates. Non-Consent Police Generated Tows.

(1) \$145 per hour, per unit, when towing a "Light Duty" vehicle.

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(2) \$240 per hour, per unit, when towing a "Medium Duty" vehicle.

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and

which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(3) \$300 per hour, per unit, when towing a "Heavy Duty" vehicle.

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will be considered in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

(6) Pursuant to Section 72-9-603 it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-703.

(7) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances. Strobe lights are not allowed on Tow Trucks. The acceptable color for tow truck lights is amber.

R909-19-1[3]2. Maximum Storage Rates. Non-Consent Police Generated Tows.

(1) ~~25~~40 Maximum per day, per unit, for outside storage of "Light Duty" vehicles.

(2) ~~30~~45 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) ~~45~~60 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles.

(4) ~~70~~85 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) ~~100~~115 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) ~~150~~165 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part

172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-703.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-1[2]3. Maximum Non-Consent Non-[]Police Generated Towing Rate.

(1) The maximum rate for a "Light Duty" vehicle is \$145 per tow.

(2) The maximum rate for a "Medium Duty" vehicles is \$240 per tow.

(3) The maximum rate for a "Heavy Duty" vehicle is \$300 per tow.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will be considered in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-703.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-14. Maximum Storage Rates. Non-Consent Non-Police Generated Tows.

(1) \$25 Maximum per day, per unit, for outside storage of "Light Duty" vehicles.

(2) \$30 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) \$45 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles.

(4) \$70 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) \$100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) \$150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-703.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-1[4]5. Fuel Surcharge for Non-Consent Police and Non-Consent Non-Police Generated Tows.

(1) When the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel raises \$0.[50]25 from the base rate of \$3.00 to \$3.[50]25 per gallon, a tow truck motor carrier may charge a [+0]5% surcharge of the base tow rate. An additional [+0]5% shall be allowed for each \$0.[50]25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

TABLE

Fuel Surcharge		Fuel Price				
Size of Tow	Base Rate	\$3.50	\$4.00	\$4.50	\$5.00	\$5.50
Light Duty	\$145.00	\$14.50	\$29.00	\$43.50	\$58.00	\$72.50
Medium Duty	\$240.00	\$24.00	\$48.00	\$72.00	\$96.00	\$120.00
Heavy duty	\$300.00	\$30.00	\$60.00	\$90.00	\$120.00	\$150.00

Fuel Surcharge		Fuel Price				
Size of Tow	Base Rate	\$3.25	\$3.50	\$3.75	\$4.00	\$4.25
Light Duty	\$145.00	\$7.25	\$14.50	\$21.75	\$29.00	\$36.25
Medium Duty	\$240.00	\$12.00	\$24.00	\$36.00	\$48.00	\$60.00
Heavy Duty	\$300.00	\$15.00	\$30.00	\$45.00	\$60.00	\$75.00

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.sap>.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a one time fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-1[5]6. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-1[6]7. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-1[7]8. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-1[8]9. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4892.

R909-19-[19]20. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-[20]21. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issues related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

R909-19-[21]22. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

R909-19-[22]23. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-[23]24. Life Essential Property.

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

KEY: safety regulations, trucks, towing, certifications
Date of Enactment or Last Substantive Amendment: [September 10, 2013]2014
Notice of Continuation: September 19, 2011

Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703

**Workforce Services, Employment
Development
R986-200-207
Participation in Child Support
Enforcement**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38472
FILED: 04/30/2014**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide that undocumented aliens are not provided a period of reduced benefits.

SUMMARY OF THE RULE OR CHANGE: The current rule provides that termination of Family Employment Plan benefits will be reduced for a period of time to allow individuals time to cooperate with child support efforts except in certain circumstances. The Department intends to add that undocumented alien parents will not receive a period of reduced benefits. Notice will be given and the client can appeal the decision so all due process rights will be observed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This applies to federally-funded programs so there are no costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-200. Family Employment Program.

R986-200-207. Participation in Child Support Enforcement.

- (1) Receipt of child support is an important element in increasing a family's income.
 - (2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.
 - (3) A parent's duty to support continues until the child:
 - (a) reaches age 18;
 - (b) is 18 years old and enrolled in high school during the normal and expected year of graduation;
 - (c) is emancipated by marriage or court order;
 - (d) is a member of the armed forces of the United States;
- or
- (e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits;~~[-or]~~

(c) the client is participating in FEPTP~~[-];~~ or

~~(d) the client is an undocumented alien parent.~~

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, [~~illegal~~]undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

KEY: family employment program

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

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

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

Administrative Services, Purchasing and General Services

R33-6

Modification and Termination of Contracts for Supplies, Services, Construction, and Technology

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38446
FILED: 04/17/2014

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 authorized under the Utah Procurement Code, Title 63G, Chapter 6, the purpose of which is to simplify, clarify, and modernize the law governing procurement by this state; to ensure the fair and equitable treatment of all persons who deal with the procurement system of this state; to provide increased economy in state procurement activities; and to foster effective broad-based competition within the free enterprise system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received either supporting or opposing 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 needs to be continued because it

establishes procedures and justifications for the modification and termination of contracts for supplies, services, construction, and technology.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 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:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 04/17/2014

Administrative Services, Purchasing and General Services

R33-7

Cost Principles

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38447
FILED: 04/17/2014

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 authorized under the Utah Procurement Code, Title 63G, Chapter 6, the purpose of which is to simplify, clarify, and modernize the law governing procurement by this state; to ensure the fair and equitable treatment of all persons who deal with the procurement system of this state; to provide increased economy in state procurement activities; and to foster effective broad-based competition within the free enterprise system.

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 either supporting or opposing 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 needs to be continued because it establishes cost principles and procedures for contracts made by competitive sealed bidding, and competitive sealed proposals.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 04/17/2014

Administrative Services, Purchasing
and General Services
R33-9
Insurance Procurement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38448
FILED: 04/17/2014

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 authorized under the Utah Procurement Code, Title 63G, Chapter 6, the purpose of which is to simplify, clarify, and modernize the law governing procurement by this state; to ensure the fair and equitable treatment of all persons who deal with the procurement system of this state; to provide increased economy in state procurement activities; and to foster effective broad-based competition within the free enterprise system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received either opposing or supporting 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 needs to be continued because it establishes insurance procurement requirements.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 04/17/2014

**Capitol Preservation Board (State),
Administration**

R131-13

**Health Reform - Health Insurance
Coverage in State Contracts -
Implementation**

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

DAR FILE NO.: 38476
FILED: 05/01/2014

**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: The rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule needs to be continued because the Capitol Preservation Board is required to comply with the provisions of Section 63C-9-403, Contracting power of executive director -- Health insurance coverage.

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov

◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 05/01/2014

**Health, Family Health and
Preparedness, Child Care Licensing**

R430-8

Exemptions From Child Care Licensing

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

DAR FILE NO.: 38453
FILED: 04/25/2014

**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 26-39-104(1)(a) allows the Department of Health to "make and enforce rules to implement this chapter and, as necessary to protect children's common needs for a safe and healthy environment...." This rule defines which programs are exempt, based on statute, from child care licensing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary in order for the Department of Health to continue to fulfill its statutory responsibility to regulate child care programs in order to protect the health and safety of the children in these programs.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/25/2014

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

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

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

Administrative Services

Fleet Operations
No. 38312 (AMD): R27-4-13. Disposal of State Vehicles
Published: 03/15/2014
Effective: 04/22/2014

Risk Management

No. 38250 (AMD): R37-4. Adjusted Utah Governmental
Immunity Act Limitations on Judgments
Published: 02/15/2014
Effective: 04/30/2014

Agriculture and Food

Animal Industry
No. 38294 (AMD): R58-3. Brucellosis Vaccination
Requirements
Published: 03/01/2014
Effective: 04/16/2014

Marketing and Development

No. 38287 (NEW): R65-12. Utah Small Grains and Oilseeds
Marketing Order
Published: 03/01/2014
Effective: 04/16/2014

Alcoholic Beverage Control

Administration
No. 38323 (AMD): R81-1-32. Further Application
Published: 03/15/2014
Effective: 04/29/2014

Commerce

Corporations and Commercial Code
No. 38320 (R&R): R154-2. Utah Uniform Commercial Code,
Revised Article 9 Rules
Published: 03/15/2014
Effective: 04/21/2014

Occupational and Professional Licensing

No. 38313 (AMD): R156-42a. Occupational Therapy
Practice Act Rule
Published: 03/15/2014
Effective: 04/21/2014

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 38191 (AMD): R414-1-5. Incorporations by Reference
Published: 01/01/2014
Effective: 05/01/2014

No. 38318 (AMD): R414-61. Home and Community-Based
Services Waivers
Published: 03/15/2014
Effective: 04/21/2014

No. 38317 (AMD): R414-304-5. MAGI-Based Coverage
Groups
Published: 03/15/2014
Effective: 04/21/2014

No. 38321 (AMD): R414-310. Medicaid Primary Care
Network Demonstration Waiver
Published: 03/15/2014
Effective: 04/21/2014

No. 38322 (AMD): R414-320. Medicaid Health Insurance
Flexibility and Accountability Demonstration Waiver
Published: 03/15/2014
Effective: 04/21/2014

NOTICES OF RULE EFFECTIVE DATES

Family Health and Preparedness, Primary Care and Rural Health
No. 38305 (NEW): R434-40. Utah Health Care Workforce Financial Assistance Program Rules
Published: 03/15/2014
Effective: 05/08/2014

Insurance
Administration
No. 38308 (REP): R590-195. Car Rental Related Licensing Rule
Published: 03/15/2014
Effective: 04/22/2014

Labor Commission
Adjudication
No. 38306 (AMD): R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims
Published: 03/15/2014
Effective: 04/22/2014

Natural Resources
Wildlife Resources
No. 38316 (AMD): R657-13. Taking Fish and Crayfish
Published: 03/15/2014
Effective: 04/21/2014

Public Service Commission
Administration
No. 38278 (AMD): R746-343-15. Surcharge
Published: 03/01/2014
Effective: 05/01/2014

End of the Notices of Rule Effective Dates Section

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

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2014 through May 01, 2014. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Fleet Operations</u>					
R27-4-13	Disposal of State Vehicles	38312	AMD	04/22/2014	2014-6/4
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38446	5YR	04/17/2014	Not Printed
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	Not Printed
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	Not Printed
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	38250	AMD	04/30/2014	2014-4/4
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-3	Brucellosis Vaccination Requirements	38294	AMD	04/16/2014	2014-5/4
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67
<u>Marketing and Development</u>					
R65-12	Utah Small Grains and Oilseeds Marketing Order	38287	NEW	04/16/2014	2014-5/5
<u>Regulatory Services</u>					
R70-530	Food Protection	38262	R&R	03/27/2014	2014-4/5

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-16	Disqualification Based Upon Conviction of Crime	38274	AMD	03/25/2014	2014-4/10
R81-1-32	Further Application	38323	AMD	04/29/2014	2014-6/7
R81-7	Single Event Permits	38275	AMD	03/25/2014	2014-4/11
R81-10b	Temporary Beer Event Permits	38276	AMD	03/25/2014	2014-4/14

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Administration

R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed
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CAPITOL PRESERVATION BOARD (STATE)

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R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	38476	5YR	05/01/2014	Not Printed
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R152-21	Credit Services Organizations Act Rules	38266	5YR	01/29/2014	2014-4/67
R152-26	Telephone Fraud Prevention Act	38125	AMD	01/07/2014	2013-23/4

Corporations and Commercial Code

R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	38320	R&R	04/21/2014	2014-6/9
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R156-1-501	Unprofessional Conduct	38157	AMD	01/21/2014	2013-24/6
R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	2014-4/68
R156-42a	Occupational Therapy Practice Act Rule	38313	AMD	04/21/2014	2014-6/24
R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
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R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
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R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
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R156-72	Acupuncture Licensing Act Rule	38165	AMD	02/10/2014	2014-1/8
R156-80a	Medical Language Interpreter Act Rule	38388	5YR	03/31/2014	2014-8/37
R156-81	Retired Volunteer Health Care Practitioner Act Rule	38382	5YR	03/25/2014	2014-8/37

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R277-117	Utah State Board of Education Protected Documents	38299	AMD	04/07/2014	2014-5/16
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R277-400	School Emergency Response Plans	38300	AMD	04/07/2014	2014-5/17
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R277-527	International Guest Teachers	38190	AMD	02/07/2014	2014-1/18
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R307-150 Emission Inventories 38261 5YR 01/28/2014 2014-4/70

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R307-214-3 Oil and Gas Sector: National Emission Standards for Hazardous Air Pollutants 38105 AMD 03/06/2014 2013-23/18

R307-302 Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties 38166 AMD 03/06/2014 2014-1/20

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R307-401-19 General Approval Order 37833 CPR 01/06/2014 2013-23/55

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R414-61	Home and Community-Based Services Waivers	38318	AMD	04/21/2014	2014-6/29
R414-90	Diabetes Self-Management Training	38368	5YR	03/18/2014	2014-8/40
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R414-306-5	Medical Transportation	38129	AMD	01/10/2014	2013-23/35
R414-310	Medicaid Primary Care Network Demonstration Waiver	38321	AMD	04/21/2014	2014-6/32
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R414-401	Nursing Care Facility Assessment	38418	5YR	04/07/2014	2014-9/53
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension

LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and
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