

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Editor
Kenneth A. Hansen, Director
Kimberly K. Hood, Executive Director

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for August 2014 Medicaid Rate Changes

Effective August 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>

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 June 17, 2014, 12:00 a.m., and July 01, 2014, 11:59 p.m. are included in this, the July 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 August 14, 2014. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through November 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
R25-11
 Utah Transparency Advisory Board,
 Procedures for Electronic Meetings

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 38634
 FILED: 06/17/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures for conducting electronic meetings for the Utah Transparency Advisory Board.

SUMMARY OF THE RULE OR CHANGE: The rule establishes procedures by which the Board members may participate in electronic meetings including requirements regarding the posting of the agenda for the meeting, establishment of the anchor location, and methods by which participation can occur.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207 and Section 63A-3-404 and Section 63G-3-201

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be some cost with providing the phone bridge.
- ◆ **LOCAL GOVERNMENTS:** No cost because the infrastructure to participate already exists. There may be some savings because people will no longer need to physically attend.
- ◆ **SMALL BUSINESSES:** No cost because the infrastructure to participate already exists. There may be some savings because board members will no longer physically attend.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost because the infrastructure to participate already exists. There may be some savings because board members will no longer physically attend.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule imposes no requirement on affected persons. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business--Possible minimal savings for board members who will no longer have to physically attend board meetings.

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:

- ◆ Brenda Lee by phone at 801-538-3102, by FAX at 801-538-3244, or by Internet E-mail at brendalee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-11. Utah Transparency Advisory Board, Procedures for Electronic Meetings.

R25-11-1. Purpose and Authority.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Utah Transparency Advisory Board meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-207, 63G-3-201, and 63A-3-404

R25-30-2. Meeting Procedure.

(1) Procedure. The following provisions govern any meeting at which one or more board members appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the board may participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notices shall specify the anchor location where the members of the board who are not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) In accordance with Utah Code Section 52-4-202 and Section 52-4-207, notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided at least 24 hours before the meetings on the Public Notice Website and to at least one newspaper of general circulation within the state or to a local media correspondent.

(c) Notice of the possibility of an electronic meeting shall be given to the board members at least 24 hours before the meeting. In addition, the notice shall describe how a board member may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a board member(s) appearing electronically or telephonically, any member(s) may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board. At the commencement of the meeting, or at such time as any member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be in the State Capitol Building, room 415, 350 North State Street, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings, Utah Transparency Advisory Board
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 52-4-207;
63G-3-201; 63A-3-404**

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38640

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes in the rules reflect legislative changes creating the Public Notice Website and the Government Records Ombudsman position. Proposed changes in this rule are to expedite hearings and to accommodate parties who may be participating in a hearing electronically or telephonically. Procedures for conducting a hearing, Third party participation, postponing a hearing, the distribution of the decision and order, the recording of the meeting, and the minutes of the meetings are covered in this section.

SUMMARY OF THE RULE OR CHANGE: Changes include shortening the time for testimony of the parties from thirty to twenty minutes. third party participants shall notify the Executive Secretary prior to a hearing and are limited to five minutes. Parties may participate electronically or telephonically. A petitioner may postpone a hearing by

notifying the Committee in writing no later than two days prior to a hearing. Recordings of meetings are posted on the Public Notice Website within three days of the meeting. Written minutes shall be made available one week prior to the scheduled meeting and shall be marked as "Draft". Minutes shall be amended and/or approved with individual votes recorded in the minutes. Approved written minutes shall be made available on the Public Notice Website.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-3-402 and Subsection 63G-2-502(2)(a) and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Amendments to the rule deal primarily with procedural issues in Records Committee hearings. There is also some clarification of language. As a consequence, there are no costs or savings for state budget.
- ◆ **LOCAL GOVERNMENTS:** Amendments to the rule deal primarily with procedural issues in Records Committee hearings. There is also some clarification of language. As a consequence, there are no costs or savings for local governments.
- ◆ **SMALL BUSINESSES:** Amendments to the rule deal primarily with procedural issues in Records Committee hearings. There is also some clarification of language. As a consequence, there are no costs or savings for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Amendments to the rule deal primarily with procedural issues in Records Committee hearings. There is also some clarification of language. As a consequence, there are no costs or savings for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Amendments to the rule deal primarily with procedural issues in Records Committee hearings. There is also some clarification of language. As a consequence, there are no costs or savings for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public [Meeting-]Notice Web[-]site.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements ~~[will]~~shall be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed ~~[thirty]~~twenty minutes to present testimony and evidence, ~~[and]~~ and to respond to questions from Committee members.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations ~~[shall]~~may be permitted. ~~[At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party.]~~Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to ~~[ten]~~five minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more ~~[members of the]~~Committee members or ~~[a party]~~parties may be ~~[participate]~~participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date. ~~[Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the governmental entity's reasonable costs and expenses. The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.]~~

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request,[:]; (ii) the timeliness of the request,[:]; (iii) whether petitioner has previously

requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of ~~the~~ each Decision and Order ~~will~~ shall be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within ~~3~~ three business days. Access to the audio recordings shall be provided by the Executive Secretary ~~[at the Utah State Archives, Research Center]~~ on the Utah Public Notice Website.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings ~~will~~ shall be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but awaiting official approval, they are a public record and must be marked as "Draft[]".

(d) At the next meeting, at the direction of the Committee ~~[e] Chair~~, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes ~~will~~ shall be then marked as "Approved[]".

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access ~~[at the Utah State Archives]~~ on the Utah Public Notice Website.

KEY: government documents, state records committee, records appeal hearings

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

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

Administrative Services, Records Committee **R35-1a** State Records Committee Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38641

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to define the terms used in the rules for the State Records Committee.

SUMMARY OF THE RULE OR CHANGE: Changes to this rule reflect the deletion of the term "prehearing" formerly conducted by the Chair of the Committee prior to a hearing. With the addition to the Archives staff of the Government Records Ombudsman, this task is no longer necessary, is not the responsibility of the Chair, and the term is not needed in the list of definitions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-3-402 and Subsection 63G-2-502(2)(a) and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget is not affected by this change in the rule, except as the position of Ombudsman was added by legislation. None of the definitions listed in this section have a fiscal impact and a change in any of the definitions will not have an impact on budget.

◆ **LOCAL GOVERNMENTS:** Local government is not affected by the change in this rule. these definitions have no impact on state budget. They are definitions of the terms used in the Rules that guide the State records Committee.

◆ **SMALL BUSINESSES:** Small businesses are not affected by this change. These are definitions of the terms used in the rules that apply to the State Records Committee. None of the definitions of terms will have a fiscal impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No person is affected by this change in the rule. These are definitions of terms and have no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for persons affected by this change in the rule. since these are definitions of terms used in the rules, there is no fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.
R35-1a. State Records Committee Definitions.
R35-1a-1. Definitions.

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to this rule:

(a) "Committee" means the State Records Committee in accordance with Section 63G-2-501, Utah Code.

(b) "Denial" means an act taken to restrict access to a government record in accordance with Section 63G-2-205 and Subsection 63G-2-403(4), Utah Code.

(c) "Executive Secretary" means the individual appointed annually as required in Subsection 63G-2-502(3), Utah Code.

(d) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a shorter time period than in accordance with Subsection 63G-2-403(4)(a).

(e) "Hearing" means a meeting by the [e]Committee to hear an appeal of a records decision by a government entity in accordance with Section 63G-2-403, Utah Code.

(f) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63G-2-403(11), Utah Code. [

~~(g) "Prehearing" means a meeting by one or more members of the State Records committee to explore issues and facilitate settlement of a records dispute involving a government entity prior to the completion of efforts to resolve such disputes through an official appeals process.~~

~~(h)~~(g) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63G-2-403, Utah Code.

KEY: state records committee, records appeal hearings, government documents
Date of Enactment or Last Substantive Amendment: [March 8, 2005]2014

Notice of Continuation: June 3, 2014
Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

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

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38642
 FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes in the rule more accurately define the procedures for declining a request to the Committee for a hearing.

SUMMARY OF THE RULE OR CHANGE: The Chair and one other member of the Committee shall be consulted in order to decline a hearing request. A hearing may be declined if the petitioner does not provide sufficient proof that the governmental entity has at one time maintained the requested record. To file an appeal, a petitioner must submit a copy of the initial records request or a statement of the specific records requested, as well as any denial of the records requested. A hearing may be declined if pursuant to Subsection 63G-2-403(4)(b)(ii), it was found that the records at issue are appropriately classified. A notice to the petitioner shall include a copy of the previous order. A possible public interest claim may be a reason to not decline a hearing. The committee may reverse the decision to decline a hearing by a majority vote of members present. The annual report shall include a complete documented list of hearings held, withdrawn, and declined.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-3-402 and Subsection 63G-2-502(2)(a) and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget is not affected by this change in the rule. The procedures outlined in this rule have no fiscal impact. They are outlined to facilitate the way the Committee operates when it answers appeals. The Committee members work with Archives staff and the procedures that are followed do not have a fiscal component that is affected by any hearings that are denied or scheduled.

♦ **LOCAL GOVERNMENTS:** Local government is not affected by this change in the rule. The rule changes do not include any increased financial obligation or savings that would affect the state budget.

♦ **SMALL BUSINESSES:** Small business is not affected by this change in the rule. Small businesses are not affected by the way hearings are scheduled or denied. No fiscal impact would be attached to hearings scheduled or denied.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No person is affected by this change in the rule. Since this rule is procedural within the State Records Committee, it has no fiscal impact on persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change in the rule. The rule addresses procedures for denying hearings and how the Committee answers appeals. There is no cost associated with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not affected and no cost is entailed in this change to the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.

R35-2. Declining Appeal Hearings.

R35-2-1. Authority and Purpose.

In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the State Records Committee.

R35-2-2. Declining Requests for Hearings.

(1) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee C[e]hair ~~[of the Committee]~~ and at least one other member of the Committee as selected by the C[e]hair.

(2) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record ~~[does]~~ is not ~~[exist]~~ maintained by the governmental entity, the

petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record ~~[did exist]~~ was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. The Committee C[e]hair ~~[of the Committee]~~ shall determine whether or not the petitioner has provided sufficient evidence. If the Committee C[e]hair ~~[of the Committee]~~ determines that sufficient evidence has been provided, the C[e]hair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the Committee C[e]hair ~~[of the Committee]~~ determines that sufficient evidence has not been provided, the C[e]hair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the C[e]hair to direct the Executive Secretary to not schedule a hearing.

(3) In order to file an appeal, the petitioner must submit a copy of his or her ~~[their]~~ initial records requests or a statement of the specific records requested if a copy is unavailable to the petitioner, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(4) The Committee C[e]hair ~~[of the Committee]~~ and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be ~~[signed and]~~ retained in the file.

(5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii), Utah Code, shall include a copy of the previous order of the Committee holding that the records ~~[series]~~ at issue are appropriately classified.

(6) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(7) If a Committee member has requested a discussion to reconsider the decision[s] to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision ~~[of the Executive Secretary]~~ and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and/or whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(8) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held, withdrawn, and ~~[all hearings]~~ declined.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [January 5, 2007]2014

Notice of Continuation: June 3, 2014
Authorizing, and Implemented or Interpreted Law: 63G-2-403(4)

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

**NOTICE OF PROPOSED RULE
 (Repeal)**

DAR FILE NO.: 38647
 FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The original purpose for the rule was to resolve disputes and facilitate access to records. The rule established the procedures for prehearing conferences. The Committee Chair or a member of the Committee assigned by the Chair could direct disputing parties to appear at a prehearing conference for the purposes of exploring areas of agreement and facilitating settlement of an appeal. Now this function is the domain of the Government Records Ombudsman and the rule is no longer needed.

SUMMARY OF THE RULE OR CHANGE: The rule is no longer needed as prehearing conferences are no longer conducted by the Chair of the State Records Committee. With the establishment of the position of Government Records Ombudsman, the resolution of disputes and mediation between parties prior to hearings is handled by the Ombudsman. The proposal of the Committee is that this rule be repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-3-402 and Subsection 63G-2-502(2)(a) and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state budget is not affected by the repeal of this rule. When this rule is not in effect, no fiscal impact is anticipated.
- ◆ **LOCAL GOVERNMENTS:** No impact on local government is anticipated by not having prehearing conferences.
- ◆ **SMALL BUSINESSES:** Small businesses will feel no affect as a result of the repeal of this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons are not affected by the appeal of this rule. No fiscal impact will be felt by the repeal of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is associated with the repeal of this rule. If the rule is eliminated, no compliance costs will occur.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses. The elimination of prehearing conferences will have no compliance cost or benefits associated with it.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.

[R35-3. Prehearing Conferences.

R35-3-1. Authority and Purpose.

~~In accordance with the general objectives of the Government Records Access and Management Act in facilitating access to records, and in keeping with the objectives of hearing procedures found in Section 63G-2-403, Utah Code, to resolve disputes, this rule authorizes and establishes the procedure for holding prehearing conferences.~~

R35-3-2. Scheduling Prehearing Conferences.

~~(a) In the process of planning and organizing efforts to execute appeals which are filed pursuant to Section 63G-2-403, the chair of the state records committee or another member of the state records committee assigned by the state records committee chair, at his or her discretion, may direct the disputing parties to appear before him or her, in person or telephonically, for a prehearing conference, to be held before any official appeals hearing, for such purposes as:~~

- ~~(1) encouraging exploration of areas of agreement, including stipulations;~~
- ~~(2) facilitating settlement of the appeal; or~~
- ~~(3) discussion of the issues raised by the parties on the appeal.~~

~~(b) In the event that the issue, or issues scheduled for an appeals hearing are resolved at a prehearing conference, the committee chair shall report the settlement to the entire records committee at the next scheduled meeting for the purposes of creating a public record. Any stipulations shall be written and presented to the members of the records committee at the hearing.~~

~~KEY: government documents, state records committee, records appeal hearings~~

~~Date of Enactment or Last Substantive Amendment: October 13, 2009~~

~~Notice of Continuation: June 3, 2014~~

~~Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)]~~

Administrative Services, Records Committee

R35-4

Compliance with State Records Committee Decisions and Orders

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38643

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change clarifies the language in this rule and outlines the process for complying with an order of the State Records Committee.

SUMMARY OF THE RULE OR CHANGE: The references to the State Records Committee are made consistent. A governmental entity ordered to produce records shall file with the Executive Secretary either a notice of compliance or a copy of the appellant's intent to appeal no later than the thirtieth day following the date of the Committee order. In the event a governmental entity fails to file within the time frame, the Committee recourses are outlined. Changes to this rule are for consistency in capitalization and language and do not change the procedures outlined in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-2-502(2)(a) and Section 63G-3-402 and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget is not affected by this change. Changes in this rule are for consistency in form and capitalization. The state budget is not affected by the requirement for governmental entities to comply with or appeal an order of the State Records Committee.

♦ **LOCAL GOVERNMENTS:** Local governments are not affected by the changes in wording in the rule. The rule requires a governmental entity to comply and submit a letter of compliance or appeal an order of the State Records Committee. No fiscal impact follows from compliance with the provisions of this rule.

♦ **SMALL BUSINESSES:** Small business is not affected by this change. No fiscal impact is made by the changes in spelling and capitalization to this rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No person is affected by this change to the rule. No person is affected by changes to the format and capitalization that are made in this rule. No fiscal impact is made in these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs are associated with compliance to this rule. There are no costs as a result of the changes in this rule. The rule deals with compliance to orders made by the State Records Committee and no costs are associated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not impacted by changes to this rule. The rule deals with compliance of a governmental entity to an order of the State Records Committee.

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

ADMINISTRATIVE SERVICES

RECORDS COMMITTEE

ARCHIVES BUILDING

346 S RIO GRANDE

SALT LAKE CITY, UT 84101-1106

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.

R35-4. Compliance with State Records Committee Decisions and Orders.

R35-4-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(14), Utah Code, this rule intends to establish the procedure for complying with an order of the State Records Committee.

R35-4-2. Notices of Compliance.

(1) The [e]Executive [s]Secretary of the [state records e]Committee shall send an order of the [state records e]Committee by certified mail to the petitioner and to the governmental entity ordered to produce records.

(2) Pursuant to Subsection 63G-2-403(14), Utah Code, each governmental entity ordered by the Committee to produce records [by the records committee], shall file with the [state records e]Committee Executive Secretary either a notice of compliance, or a copy of the appellant's notice of intent to appeal [of]the [records

e]Committee order, no later than the thirtieth day following the date of the ~~[state records e]~~Committee order.

(3) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and shall state the method and date of delivery.

(4) In the event a governmental entity fails to file a notice of compliance or a copy of the appellant's notice of intent to appeal ~~[of]~~the ~~[records e]~~Committee order within the time frame specified, the ~~[state records e]~~Committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(5) The ~~[state records e]~~Committee may also impose a civil penalty of up to \$500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled C[e]ommittee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: ~~[March 4, 2005]~~2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

Administrative Services, Records Committee R35-5

Subpoenas Issued by the State Records Committee

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38645

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to outline the procedures and the justification for the Committee to issue subpoenas given that hearsay is available before the Committee. Changes to the rule are for consistency in language and capitalization and do not substantively change the rule.

SUMMARY OF THE RULE OR CHANGE: Changes to the rule are for consistency in language and capitalization and do

not substantively change the rule. The procedures for a petitioner to initiate a request for a subpoena stay the same. The Committee Chair shall review each request for a subpoena and grant or deny the request within three business days. The requesting party may obtain a signed but otherwise blank subpoena form from the Executive Secretary. The requesting party shall fill out the form and have it served upon the proposed witness at least seven days prior to a hearing. A subpoenaed witness may file a motion to quash the subpoena with the Executive Secretary. Terms used in this rule are changed for consistency. The rule itself is not changed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-3-402 and Subsection 63G-2-502(2)(a) and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget is not affected by this rule. The rule outlines the issuance of subpoenas by the State Records Committee. Any cost are borne by a person requesting a subpoena and not by a governmental entity.

♦ **LOCAL GOVERNMENTS:** Local government is not affected by this change in the rule. No cost is associated with the changes in wording to this rule. The procedures remain unaltered in the request for subpoenas.

♦ **SMALL BUSINESSES:** Small business is not affected by a change in this rule. No cost is incurred to small business by this rule. Changes in the rule are for consistency in style. The procedures for requesting and obtaining subpoenas is not changed.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No person is affected by the change in the rule. Only people who are participating in hearings before the State Records Committee and want to subpoena witnesses could be affected by this rule. The changes to this rule are in format only and no costs to governmental entities are involved.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost associated with compliance to this rule or to the change. The changes in this rule do not affect the way a person goes about requesting a subpoena. The rule is changed only in capitalization. No compliance costs follow from these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses. The process of requesting a subpoena has no cost impact on businesses as a result of these changes in consistency of language and capitalization.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.

R35-5. Subpoenas Issued by the Records Committee.

R35-5-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the State Records Committee.

R35-5-2. Subpoenas.

(1) In order to initiate a request for a subpoena, a party shall file a written request with the ~~[chair of the state records e]Committee Chair~~ at least 14 days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the ~~[state records e]Committee~~, the individual being subpoenaed must be present.

(2) The ~~Committee [e]Chair [of the state records ecommittee]~~ shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(a) a weighing of the proposed witness' testimony as material and necessary; or

(b) a weighing of the burden to the witness against the need to have the witness present.

(3) If the ~~Committee [e]Chair~~ grants the request, the requesting party may obtain a subpoena form, signed, but otherwise ~~[in]blank, from the [e]Executive [s]Secretary [of the state records ecommittee]~~. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(4) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(5) A subpoenaed witness may file a motion to quash the subpoena with the ~~[e]Executive [s]Secretary~~ at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied by the Committee Chair based on the same considerations as outlined in Subsection R35-5-2(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to

the appeal hearing, and shall be heard by the ~~[e]Committee [e]Chair~~. The hearing may be in person~~[-]~~ or by telephone, as determined by the ~~[e]Committee [e]Chair~~. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(6) If the Committee [e]Chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [~~March 4, 2005~~]2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

**Administrative Services, Records
Committee**

R35-6

Expedited Hearing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38646

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule outlines the procedures for requesting and scheduling an expedited hearing before the State Records Committee.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule are not changes to the procedures but to the language of the rule. The word "designation" is replaced with "classification". The numbers are spelled out and the capitalization of "Committee Chair", "Committee", "Executive Secretary", and "Expedited Hearing" are made consistent.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article IV and Section 63G-3-402 and Subsection 63G-3-601(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget is not affected by this change in the rule. Word are replaced, numbers are spelled out, and capitalization is made consistent. There is not a cost associated with these changes.

♦ **LOCAL GOVERNMENTS:** Local government is not affected by this change to the rule. Words are replaced, numbers are spelled out, and capitalization is made consistent. There is not a cost associated with these changes.

♦ **SMALL BUSINESSES:** Small business is not affected by this change to the rule. The changes in language do not change the procedures for requesting an expedited hearing.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No person is affected by this change to the rule. Persons are not affected by changes in the wording of this rule. The rule outlines the procedures for requesting an expedited hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs for compliance to this rule or to the proposed change. Requests for expedited hearings have no costs associated with them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses. There is no cost to businesses by changes to the rule outlining the procedures for requesting expedited hearings.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/16/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/25/2014

AUTHORIZED BY: Lex Hemphill, Chair

R35. Administrative Services, Records Committee.

R35-6. Expedited Hearing.

R35-6-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(1) A party appealing a records ~~[designation]~~classification to the Committee may request that a hearing be scheduled to hear the appeal prior to ~~[+0]~~ten business days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(2) A written request shall include the reason(s) the request is being made.

(3) The Executive Secretary shall consult with the ~~Committee [e]Chair [of the Committee]~~ to decide whether an Expedited Hearing is warranted.

(4) The standard for granting an Expedited Hearing is "good cause shown." The ~~Committee [e]Chair~~ shall take into account the reason for the request, and balance that against the burden to the Committee and the governmental entity.

R35-6-3. Scheduling the Expedited Hearing.

(1) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(2) After settling on a date no sooner than ~~[5]~~five days nor later than 14 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and governmental entity and schedule the hearing.

(3) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: ~~[March 4, 2005]~~2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)

Commerce, Occupational and
Professional Licensing

R156-1

General Rule of the Division of
Occupational and Professional
Licensing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38659

FILED: 07/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to: 1) implement aspects of legislation enacted during the 2014 General Legislative Session that fit in the Division's umbrella chapter of rule as opposed to specific licensing acts, for the following bills: H.B. 277 Music Therapist Licensure Amendments,

S.B. 47 Emergency Management Act Amendments, and S.B. 77 Pharmacy Practice Act Amendments; 2) clarify and expand the definition of the term "cancel" or "cancellation" in Subsection R156-1-102(3); 3) clarify that a violation of a diversion agreement is unprofessional conduct in Subsection R156-1-501(8); and (4) make technical corrections.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-1-102(3), the definition of "cancel" or "cancellation" is clarified and enlarged to address a license that was not issued to a licensee in error when issued, but subsequently the licensee fails to maintain the ongoing qualifications for licensure. A new Section R156-1-303 is added, Subsection R156-1-303(1) specifies the method of the filing required under Subsection 53-2a-1205(1) for an out-of-state business that conducts operations within the state for purposes of performing work or services related to a declared state disaster or emergency during the disaster period. Subsection R156-1-303(2) specifies that the regular licensure requirements apply after the declared state disaster or emergency is over, unless the person qualifies for and is issued a temporary license. Subsections R156-1-305(2)(r) through (w) respectively add dispensing medical practitioner and dispensing medical practitioner clinic pharmacy classifications to the classifications of licensure that may be placed on inactive status. Subsections R156-1-308a(1)(gg), (hh), and (eee) respectively establish dispensing medical practitioners, dispensing medical practitioner clinical pharmacy, and certified music therapist license classification renewal dates. Subsection R156-1-308a(2)(k) establishes that the pharmacy technician trainee license is issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure. In Subsection R156-1-501(8), add as an additional definition of unprofessional conduct "violating any term, condition, or requirement contained in a 'diversion agreement' as defined in Subsection 58-1-404(6)(a)".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1) (a) and Subsection 58-1-501(2)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 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 occupations and professions which are regulated by the Division. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to occupations and professions which are regulated by the Division. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business as the proposed amendments are not significant substantive

changes and the majority of the proposed amendments are as a result of recently passed legislation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments do not affect and will not impact other persons except for small cost or savings for dispensing medical practitioners and dispensing medical practitioner clinic pharmacies who put their licenses on inactive status. The inactive fee for all classification is \$50. Dispensing medical practitioner applicants/licensees will pay the following fees: application fee of \$110 and two-year renewal fee of \$63. Dispensing medical practitioner clinic pharmacy applicants/licensees will pay the following fees: application fee of \$200 and two-year renewal fee of \$103. Certified Music Therapist applicants/licensees will pay the following fees: application fee of \$70 and two-year renewal fee of \$47. It should be noted that the required fees are as a result of new legislation in the bill numbers noted above and not as a result of these proposed rule amendments. The Division is not able to determine an aggregate cost amount since the Division does not know how many dispensing medical practitioners may want to place the licenses on an inactive status nor does the Division know how many dispensing medical practitioners and/or clinic pharmacies or certified music therapists may become licensed in those classifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments do not affect and will not impact other persons except for small cost or savings for dispensing medical practitioners and dispensing medical practitioner clinic pharmacies who put their licenses on inactive status. The inactive fee for all classifications is \$50. Dispensing medical practitioner applicants/licensees will pay the following fees: application fee of \$110 and two-year renewal fee of \$63. Dispensing medical practitioner clinic pharmacy applicants/licensees will pay the following fees: application fee of \$200 and two-year renewal fee of \$103. Certified Music Therapist applicants/licensees will pay the following fees: application fee of \$70 and two-year renewal fee of \$47. It should be noted that the required fees are as a result of new legislation in the bill numbers noted above and not as a result of these proposed rule amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing responds to legislative action (H.B. 277, S.B. 47, and S.B. 77) taken in the 2014 General Legislative Session. The filing clarifies circumstances in which a professional license may be canceled by the Division of Occupational and Professional Licensing; specifies the requirements attendant to professional practice during a declared disaster or emergency; expands the list of licensees that may be inactivated and that must be renewed; establishes circumstances in which the term of a pharmacy technician licensee may be extended; and establishes that violation of a diversion agreement constitutes unprofessional conduct. No fiscal impact to businesses is anticipated beyond that considered by the Legislature in determining to enact the statutory provision that triggered this filing.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license;

~~_____ (a) issued to a licensee in error, such as where [Such action includes rescinding] a license is issued to an applicant;~~

~~_____ (i) whose payment of the required application fee is dishonored when presented for payment[;];~~

~~_____ (ii) [or] who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;~~

~~_____ (iii) who has been issued the wrong classification of licensure; or~~

~~_____ (iv) due to any other error in issuing a license; or~~

~~_____ (b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.~~

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

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

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

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

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

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

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

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

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

(a) Mitigating circumstances include:

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

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

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

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

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

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

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

(i) forced or compelled restitution;

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

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

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

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

(19) "Probation" means disciplinary action placing terms and conditions upon a license;

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

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

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

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

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

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

(24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

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

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

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

(26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

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

(28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section

58-1-306, all rights and privileges associated with a license issued to the licensee.

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

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

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

- (a) Division concerns;
- (b) allegations upon which those concerns are based;
- (c) potential for administrative or judicial action; and
- (d) disposition of Division concerns.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

- (a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or
- (b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

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

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

- (a) advanced practice registered nurse;
- (b) architect;
- (c) audiologist;
- (d) certified nurse midwife;
- (e) certified public accountant emeritus;
- (f) certified registered nurse anesthetist;
- (g) certified court reporter;
- (h) certified social worker;
- (i) chiropractic physician;
- (j) clinical mental health counselor;
- (k) clinical social worker;
- (l) contractor;
- (m) deception detection examiner;
- (n) deception detection intern;
- (o) dental hygienist;

(p) dentist;

(q) direct-entry midwife;

(r) dispensing medical practitioner - advanced practice registered nurse;

(s) dispensing medical practitioner - physician and surgeon;

(t) dispensing medical practitioner - physician assistant;

(u) dispensing medical practitioner - osteopathic physician and surgeon;

(v) dispensing medical practitioner - optometrist;

(w) dispensing medical practitioner - clinic pharmacy;

(~~[r]~~x) genetic counselor;

(~~[s]~~y) health facility administrator;

(~~[t]~~z) hearing instrument specialist;

(~~[u]~~aa) landscape architect;

(~~[v]~~bb) licensed advanced substance use disorder counselor;

(~~[w]~~cc) marriage and family therapist;

(~~[x]~~dd) naturopath/naturopathic physician;

(~~[y]~~ee) optometrist;

(~~[z]~~ff) osteopathic physician and surgeon;

(~~[aa]~~gg) pharmacist;

(~~[bb]~~hh) pharmacy technician;

(~~[cc]~~ii) physical therapist;

(~~[dd]~~jj) physician assistant;

(~~[ee]~~kk) physician and surgeon;

(~~[ff]~~ll) podiatric physician;

(~~[gg]~~mm) private probation provider;

(~~[hh]~~nn) professional engineer;

(~~[ii]~~oo) professional land surveyor;

(~~[jj]~~pp) professional structural engineer;

(~~[kk]~~qq) psychologist;

(~~[l]~~rr) radiology practical technician;

(~~[mm]~~ss) radiologic technologist;

(~~[nn]~~tt) security personnel;

(~~[oo]~~uu) speech-language pathologist;

(~~[pp]~~vv) substance use disorder counselor; and

(~~[qq]~~xx) veterinarian.

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

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

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

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

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period

of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

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

([1]a) Acupuncturist	May 31	even years
([2]b) Advanced Practice Registered Nurse	January 31	even years
([3]c) Advanced Practice Registered Nurse-CRNA	January 31	even years
([4]d) Architect	May 31	even years
([5]e) Athlete Agent	September 30	even years
([6]f) Athletic Trainer	May 31	odd years
([7]g) Audiologist	May 31	odd years
([8]h) Barber	September 30	odd years
([9]i) Barber School	September 30	odd years
([10]j) Building Inspector	November 30	odd years
([11]k) Burglar Alarm Security	March 31	odd years
([12]l) C.P.A. Firm	September 30	even years
([13]m) Certified Court Reporter	May 31	even years
([14]n) Certified Dietitian	September 30	even years
([15]o) Certified Medical Language Interpreter	March 31	odd years
([16]p) Certified Nurse Midwife	January 31	even years
([17]q) Certified Public Accountant	September 30	even years
([18]r) Certified Social Worker	September 30	even years
([19]s) Chiropractic Physician	May 31	even years
([20]t) Clinical Mental Health Counselor	September 30	even years
([21]u) Clinical Social Worker	September 30	even years
([22]v) Construction Trades Instructor	November 30	odd years
([23]w) Contractor	November 30	odd years
([24]x) Controlled Substance License	Attached to primary license renewal	
([25]y) Controlled Substance Precursor	May 31	odd years
([26]z) Controlled Substance Handler	September 30	odd years
([27]aa) Cosmetologist/Barber	September 30	odd years
([28]bb) Cosmetology/Barber School	September 30	odd years
([29]cc) Deception Detection	November 30	even years
([30]dd) Dental Hygienist	May 31	even years
([31]ee) Dentist	May 31	even years
([32]ff) Direct-entry Midwife	September 30	odd years
([33]gg) <u>Dispensing Medical Practitioner</u> <u>Advanced Practice Registered Nurse,</u> <u>Optometrist, Osteopathic Physician</u> <u>and Surgeon, Physician and Surgeon,</u> <u>Physician Assistant</u>	September 30	odd years
([34]hh) <u>Dispensing Medical Practitioner</u> <u>Clinic Pharmacy</u>	September 30	odd years
([35]ii) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
([36]jj) Electrologist	September 30	odd years
([37]kk) Electrology School	September 30	odd years
([38]ll) Elevator Mechanic	November 30	even years
([39]mm) Environmental Health Scientist	May 31	odd years
([40]nn) Esthetician	September 30	odd years
([41]oo) Esthetics School	September 30	odd years
([42]pp) Factory Built Housing Dealer	September 30	even years
([43]qq) Funeral Service Director	May 31	even years
([44]rr) Funeral Service Establishment	May 31	even years
([45]ss) Genetic Counselor	September 30	even years
([46]tt) Health Facility	May 31	odd years

([45]uu) Administrator	September 30	even years
([46]vv) Hearing Instrument Specialist	September 30	odd years
([47]ww) Internet Facilitator	May 31	even years
([48]xx) Landscape Architect	May 31	even years
([49]yy) Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
([50]zz) Licensed Practical Nurse	January 31	even years
([51]aaa) Licensed Substance Use Disorder Counselor	May 31	odd years
([52]bbb) Marriage and Family Therapist	September 30	even years
([53]ccc) Massage Apprentice, Therapist	May 31	odd years
([54]ddd) Master Esthetician	September 30	odd years
([55]eee) Medication Aide Certified Music Therapist	March 31	odd years
([56]fff) Nail Technologist	September 30	odd years
([57]ggg) Nail Technology School	September 30	odd years
([58]hhh) Naturopath/Naturopathic Physician	May 31	even years
([59]iii) Occupational Therapist	May 31	odd years
([60]jjj) Occupational Therapy Assistant	May 31	odd years
([61]kkk) Optometrist	September 30	even years
([62]lll) Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
([63]mmm) Outfitter/Hunting Guide	May 31	even years
([64]nnn) Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
([65]ooo) Pharmacist	September 30	odd years
([66]ppp) Pharmacy Technician	September 30	odd years
([67]qqq) Physical Therapist	May 31	odd years
([68]rrr) Physical Therapist Assistant	May 31	odd years
([69]sss) Physician Assistant	May 31	even years
([70]ttt) Physician and Surgeon, Online Prescriber	January 31	even years
([71]uuu) Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
([72]vvv) Podiatric Physician	September 30	even years
([73]www) Pre Need Funeral Arrangement Sales Agent	May 31	even years
([74]xxx) Private Probation Provider	May 31	odd years
([75]yyy) Professional Engineer	March 31	odd years
([76]zzz) Professional Geologist	March 31	odd years
([77]aaaa) Professional Land Surveyor	March 31	odd years
([78]bbbb) Professional Structural Engineer	March 31	odd years
([79]cccc) Psychologist	September 30	even years
([80]dddd) Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
([81]eeee) Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
([82]ffff) Registered Nurse	January 31	odd years
([83]gggg) Respiratory Care Practitioner	September 30	even years
([84]hhhh) Security Personnel	November 30	even years
([85]iiii) Social Service Worker	September 30	even years
([86]jjjj) Speech-Language Pathologist	May 31	odd years
([87]kkkk) Veterinarian	September 30	even years
([88]llll) Vocational Rehabilitation Counselor	March 31	odd years

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

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

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

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

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

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

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

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

~~(m)~~ Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

~~(n)~~ Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

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

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

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

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

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference; or

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a).

KEY: diversion programs, licensing, supervision, evidentiary restrictions

Date of Enactment or Last Substantive Amendment: ~~January 21,~~ 2014

Notice of Continuation: January 5, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(2)

**Commerce, Occupational and
Professional Licensing
R156-17b
Pharmacy Practice Act Rule**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38638
FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Board of Pharmacy reviewed the rule and determined it is necessary to make the following amendments: 1) adding definitions "prepackaged" or "prepackaging" and updating dates for incorporation by reference documents; 2) renumbering of subsections; 3) modifying internship standards for graduates of foreign pharmacy schools; 4) establishing a deadline for pharmacist license applicants to pass required exams; 5) removing unnecessary language; 6) clarifying subsections describing administrative penalties and unprofessional conduct; 7) clarifying direct supervision requirements for a pharmacy technician-in-training; 8) clarifying pharmacy inventory requirements; 9) allowing a pharmacist acting as a preceptor to supervise up to five pharmacy interns in various public outreach program settings; 10) establishing standards for common carrier delivery; 11) clarifying patient counseling standards; 12) requiring compliance with compounding standards when engaging in simple compounding; 13) further defining of pharmacy security system standards; 14) modifying standards for Class D out-of-state mail order pharmacies; 15) modifying standards for Class E pharmacies to address animal immobilization; and (16) correcting typographical errors. The Division and Board of Pharmacy are also proposing the amendments as a result of S.B. 77 from the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: The following rule amendments are made throughout Rule R156-17b: renumbering of subsections, correcting rule citations, and correcting grammatical and typographical errors. Subsection R156-17b-102(1) is added to allow students graduating from pharmacy technician training programs in American Society of Health System Pharmacists (ASHP) candidate status to satisfy the pharmacy technician license education requirement. Subsection R156-17b-102(4) is added to allow

use of an acronym throughout the rule. Subsection R156-17b-102(39) is added because the terms "prepackaged" or "prepackaging" are used in Subsection R156-17b-614b (3)(d) and Subsection 58-17b-610(2)(b) and definition of these terms was necessary for enforcement and education purposes. Subsection R156-17b-102(53) was updated to reflect the most current versions of the United States Pharmacopeia (USP)-National Formulary (NF) books which are incorporated by reference. The sponsor of this year's legislation was consulted to ensure the definition conforms to his understanding. In Subsection R156-17b-302(5), an amendment was necessary due to amendments to Section R156-17b-617c in this filing. Subsection R156-17b-303a(3), Pharmacy Technicians University is added as a program satisfying the pharmacy technician license education requirement because it has acceptable standards, tuition that is cheaper than most other programs, and is accepted in several jurisdictions. In Subsection R156-17b-303a(5)(a), the last date that programs without ASHP accreditation may enroll new students is extended for an additional three years until 12/31/2018. This grants current pharmacy technician education programs without ASHP accreditation additional time to decide whether to pursue accreditation while still enrolling students. The last two sentences of Subsection R156-17b-303a(5)(a) are removed because they are no longer necessary. Subsection R156-17b-303a(5)(b) is necessary to establish an application deadline for students in a program that is exempt under Subsection R156-17b-303a(5)(a). Subsections R156-17b-303a(5)(c) and R156-17b-303a(5)(d) are necessary to ensure that a non-ASHP accredited program informs potential students, enrolled students, and student practice sites of the program's application status with ASHP accreditation. In Section R156-17b-303b, the proposed amendment establishes a separate pharmacy internship standard for graduates of foreign pharmacy schools. A separate standard is necessary because it is impossible for foreign graduates to gather experience in the U.S. that meets the standards in Subsection R156-17b-303b(1)(a). Proposed amendment references 02/14/2011 as the effective date of the Accreditation Council for Pharmacy Education (ACPE) Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0. February 14, 2001 is not the correct effective date. In Section R156-17b-303c, the proposed amendment adds Subsection R156-17b-303c(4) to require that a pharmacist license applicant pass the North American Pharmacy Licensing Examination (NAPLEX) and Multistate Jurisprudence Examination (MPJE) within six months of the date the Division approved them to take the exams. This amendment is necessary because some information, such as information disclosed in the application qualifying questionnaire, may no longer be accurate six months after the applicant submitted the application. Subsection R156-17b-303c(4)(a) is removed because it was determined that the Utah Pharmacy Technician Law and Rule Examination was unnecessary. It is a true or false take-home exam included within the license application. There is no evidence that other states have a similar exam for initial

applicants or that the exam helps protect the public. In Subsection R156-17b-402(36), the proposed amendment adds a phrase to clarify that self-inspection reports must be returned to the Division by the deadline established by the Division. In Subsection R156-17b-502(8), the proposed amendment adds a phrase to clarify that self-inspection reports must be returned to the Division by the deadline established by the Division. Subsection R156-17b-601(4) is added to clarify that a pharmacy technician-in-training may practice only under the direct supervision of a pharmacist. Subsection R156-17b-605(2)(d) is amended to clarify that it is acceptable for a pharmacy to have handwritten inventory records. In Section R156-17b-606, the proposed amendments allow a pharmacist acting as a preceptor to supervise up to five pharmacy interns in various public outreach program settings. This is allowed under conditions outlined in the rule. In Section R156-17b-608, the proposed amendments establish standards for a pharmacy's delivery of filled prescriptions when they are delivered via common carrier such as the United States Postal Service. These standards are needed because delivery of filled prescriptions via common carrier is becoming more common. The proposed amendment incorporates delivery standards accepted by the industry. In Section R156-17b-610, the proposed amendments modify patient counseling standards to better support the statutory standards established in Section 58-17b-613. Unnecessary language is removed. In Subsection R156-17b-614a(1), the proposed amendment further defines security system standards for a pharmacy. The Board and Division are concerned that the current rule does not require that a pharmacy have a security system that provides notice of unauthorized entry to an individual. In Subsection R156-17b-614a(3), compliance with compounding standards when engaging in simple compounding is required. This corrects an unintended error in a previous rule filing. In Section R156-17b-616, the proposed amendment modifies a license requirement for licensure as a Class D out-of-state mail order pharmacy. Under the amendment, an inspection completed by National Association of Boards of Pharmacy (NABP) as part of the NABP Verified Pharmacy Program (VPP) may be accepted in lieu of a state specific inspection. This requirement is necessary because in some cases, NABP conducts inspections on Class D pharmacies more frequently than state regulatory board inspectors. In Section R156-17b-617c, the proposed amendment modifies the title of a license subcategory and expands operating standards to apply to animal control facilities that perform immobilization services, such as the Utah Division of Wildlife Resources.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates United States Pharmacopeia-National Formulary USP 37-NF 32 through Supplement 1, published by United States Pharmacopeia, May 1, 2014

- ◆ Updates Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0, published by Accreditation Council for Pharmacy Education, February 14, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 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 has also paid approximately \$1,800 for two subscriptions to the United States Pharmacopeia (USP)-National Formulary (NF) books; one copy maintained by the Division and one copy sent to the Division of Administrative Rules.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to pharmacies, pharmacy programs, pharmacists, pharmacy technicians, pharmacy interns, and applicants for licensure in the pharmacy profession. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** Adding Subsection (1) to Section R156-17b-102 enables an individual who completed a program in ASHP candidate status to satisfy the pharmacy technician education program requirement. The current rule does not allow these individuals to become licensed. As a result of this proposed amendment, some individuals seeking licensure and some pharmacy technician training programs will experience cost savings. The Division is unable to estimate the potential cost savings. In Subsection (5) of Section R156-17b-303a, an individual is provided until 12/31/2018 to enroll in a program that was approved by the Division prior to 04/30/2014 but is without ASHP accreditation. This proposed amendment may result in a cost savings for pharmacy technician training programs that may continue to enroll students until 12/31/2018; however, the Division is unable to estimate the potential cost. Adding standards for common carrier delivery of medications in Section 608 may result in some pharmacies having to modify their current standards. If a pharmacy has to make modifications in order to comply with the proposed standards, they would experience some cost impact. The Division is unable to estimate the potential cost impact because the details regarding the modifications required to comply with the proposed standards are unknown. Section R156-17b-614a adds details regarding security system standards applicable to Class A and B pharmacies. Under the proposed amendment, pharmacies are required to have a security system that provides notice of unauthorized entry to an individual who is able to respond quickly and reasonably assess the entry and resolve the matter. A pharmacy that has to make modifications to their current security system to comply with the proposed standards would experience some cost impact. The Division does not know how many pharmacies need to modify their security system to comply with the proposed rule. The cost of security equipment that provides notice of unauthorized entry to a third party ranges from \$200 to \$300. Notification service fees range from \$15

to \$43 per month. However, most existing alarm systems likely meet the new standards.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Adding Subsection (1) to Section R156-17b-102 enables an individual who completed a program in ASHP candidate status to satisfy the pharmacy technician education program requirement. The current rule does not allow these individuals to become licensed. As a result of this proposed amendment, some individuals seeking licensure and pharmacy technician training programs will experience cost savings. The Division is unable to estimate the potential cost savings. In Subsection (3) of Section R156-17b-303a, Pharmacy Technicians University (PTU) is added as a possible program satisfying the pharmacy technician license education requirement. This amendment will result in cost savings for many students because other approved programs are more expensive. For example, PTU's tuition is \$99 compared to the \$2,240 tuition fee of the National Pharmacy Technician Association Online Program. In Subsection (5) of Section R156-17b-303a, an individual has until 12/31/2018 to enroll in a program that was approved by the Division prior to 04/30/2014 but is without ASHP accreditation. An individual must apply for a pharmacy technician license within two years after they enroll in the program unless otherwise approved by the Division in collaboration with the Board. Under the proposed amendment, their license application must be submitted no later than 12/31/2021. These proposed amendments may result in a cost savings for pharmacy technician training programs that may continue to enroll students until 12/31/2018. The Division is unable to estimate the potential cost savings. In Section R156-17b-303b, the proposed rule creates a pharmacy internship track specific to foreign-educated applicants. This rule change is a cost savings to foreign-educated students because it is very difficult for them to comply with the current standard. The Division is unable to estimate the potential cost savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Adding Subsection (1) to Section R156-17b-102 enables an individual who completed a program in ASHP candidate status to satisfy the pharmacy technician education program requirement. The current rule does not allow these individuals to become licensed. As a result of this proposed amendment, some individuals seeking licensure and pharmacy technician training programs will experience cost savings. The Division is unable to estimate the potential cost savings. In Subsection (3) of Section R156-17b-303a, Pharmacy Technicians University (PTU) is added as a possible program satisfying the pharmacy technician license education requirement. This amendment will result in cost savings for many students because other approved programs are more expensive. For example, PTU's tuition is \$99 compared to the \$2,240 tuition fee of the National Pharmacy Technician Association Online Program. In Subsection (5) of Section R156-17b-303a, an individual has until 12/31/2018 to enroll in a program that was approved by the Division prior to 04/30/2014 but is without ASHP accreditation. An individual must apply for a pharmacy technician license within two years

after they enroll in the program unless otherwise approved by the Division in collaboration with the Board. Under the proposed amendment, their license application must be submitted no later than 12/31/2021. These proposed amendments may result in a cost savings for pharmacy technician training programs that may continue to enroll students until 12/31/2018. The Division is unable to estimate the potential cost savings. In Section R156-17b-303b, the proposed rule creates a pharmacy internship track specific to foreign-educated applicants. This rule change is a cost savings to foreign-educated students because it is very difficult for them to comply with the current standard. The Division is unable to estimate the potential cost savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This comprehensive filing makes nonsubstantive corrections; clarifies licensing requirements regarding education, testing, and internships; and clarifies circumstances in which a licensee may be found to have engaged in unprofessional conduct. These amendments affect individuals and will therefore have no fiscal impact on businesses. In addition, the filing updates and clarifies requirements that attach to a pharmacy's supervision of technicians-in-training, use of a common carrier for drug delivery, obligation to provide patient counseling, simple compounding, animal immobilization, and security when the pharmacy is closed for business. Businesses that are out of compliance with these requirements might experience costs to modify their practices and systems to meet the standards. Such 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:

◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/22/2014 08:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.**R156-17b. Pharmacy Practice Act Rule.****R156-17b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "Accredited by ASHP" means a program that:

(a) was accredited by the ASHP on the day on which the applicant for licensure completed the program; or

(b) was in ASHP candidate status on the day on which the applicant for licensure completed the program.

([1]2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

([2]3) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(4) "ASHP" means the American Society of Health System Pharmacists.

([3]5) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

([4]6) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

([5]7) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.

([6]8) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.

([7]9) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

([8]10) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

([9]11) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization

(GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

([10]12) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

([11]13) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

([12]14) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

([13]15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

([14]16) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

([15]17) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

([16]18) "Drugs", as used in this rule, means drugs or devices.

([17]19) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

([18]20) "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

([19]21) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

([20]22) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

([21]23) "FDA" means the United States Food and Drug Administration and any successor agency.

([22]24) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

([23]25) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

([24]26) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

([25]27) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

([26]28) "Maintenance medications" means medications the patient takes on an ongoing basis.

([27]29) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

([28]30) "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

([29]31) "MPJE" means the Multistate Jurisprudence Examination.

([30]32) "NABP" means the National Association of Boards of Pharmacy.

([31]33) "NAPLEX" means North American Pharmacy Licensing Examination.

([32]34) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection ([44]16), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

([33]35) "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

([34]36) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

([35]37) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

([36]38) "PIC", as used in this rule, means the pharmacist-in-charge.

(39) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment in which the prepackaging occurred.

([37]40) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

([38]41) "PTCB" means the Pharmacy Technician Certification Board.

([39]42) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

([40]43) "Refill" means to fill again.

([41]44) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

([42]45) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

([43]46) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

([44]47) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

([45]48) "Supervisor" means a licensed pharmacist in good standing with the Division.

([46]49) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

([47]50) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

([48]51) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

([49]52) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

([50]53) "USP-NF" means the United States Pharmacopeia-National Formulary (USP [36]37-NF [34]32), [2013]2014 edition, which is official from May 1, [2013]2014 through Supplement [2]1, dated [December 1, 2013]August 1, 2014, which is hereby adopted and incorporated by reference.

([51]54) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

([52]55) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

- (a) intracompany sales or transfers;
- (b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;
- (c) the sale, purchase, or trade of a drug pursuant to a prescription;
- (d) the distribution of drug samples;
- (e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;
- (f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;
- (g) the sale, purchase or exchange of blood or blood components for transfusions;
- (h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

- (a) closed door;
- (b) hospital clinic pharmacy;
- (c) methadone clinics;
- (d) nuclear;
- (e) branch;
- (f) hospice facility pharmacy;
- (g) veterinarian pharmaceutical facility;
- (h) pharmaceutical administration facility; and
- (i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

- (a) manufacturing;
- (b) producing;
- (c) wholesaling;
- (d) distributing; and
- (e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the [s]State of Utah. Class D pharmacies require a PIC licensed in the state where the pharmacy is located and include [Ø]out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a PIC and include:

- (a) analytical laboratory;
- (b) animal [euthanasia]control;
- (c) durable medical equipment provider;
- (d) human clinical investigational drug research facility;

and

- (e) medical gas provider.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC shall have one PIC who is employed on a full-time basis as defined by the employer, who acts as a PIC for one pharmacy. However, the PIC may be the PIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

(8) The PIC shall comply with the provisions of Section R156-17b-603.

R156-17b-303a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(b), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(7), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

~~(a) accredited [or conducted by the American Society of Health System Pharmacists];~~ by ASHP; or

~~(b) conducted by:~~

~~(i) the National Pharmacy Technician Association[;];~~

~~(ii) Pharmacy Technicians University; or~~

~~(iii) a branch of the Armed Forces of the United States, and~~

~~(c) meets the following standards:~~

~~([a]i) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and~~

~~([b]ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that address:~~

~~([i]A) the specific manner in which supervision will be completed; and~~

~~([ii]B) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.~~

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examinations as listed in Subsection R156-17b-303c[-](4) within two years from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(a) An individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame or within six months after completion of a pharmacy technician training program, whichever comes first:

(i) is no longer eligible for employment as a technician-in-training and shall work in the pharmacy only as supportive personnel; and

(ii) shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

~~(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018[until January 1, 2016]. [The Division will accept and review applications for approval of pharmacy technician training programs submitted on or before March 31, 2014. The criteria used by the Division to determine whether a pharmacy technician program is approved shall be the criteria established in Subsection R156-17b-303a(2) of the rule effective immediately prior to this rule.]~~

~~(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.~~

~~(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.~~

~~(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:~~

~~(i) the program no longer satisfies the pharmacy technician license education requirement in the State of Utah; and~~

~~(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in the State of Utah.~~

(6) An applicant for licensure as a pharmacy technician is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current PTCB or ExCPT certification[; and

~~(d) has passed the Utah Pharmacy Technician Law and Rule Examination].~~

R156-17b-303b. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards are established as one of the following for the pharmacy internship required for licensure as a pharmacist:

~~(a) [f]For graduates of all U.S. [and foreign] pharmacy schools[; include the following]:~~

~~([a]i) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree~~

Guidelines Version 2.0 Effective February 14, ~~[2004]~~2011, which is hereby incorporated by reference.

(ii) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(iii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(~~iii~~iv) Advanced pharmacy practice experiences (APPE) shall include at least 1,440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(~~i~~v) Required experiences shall:

(A) include primary, acute, chronic, and preventive care among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(vi) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(~~b~~vii) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(~~e~~viii) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(~~d~~ix) No credit will be awarded for didactic experience.

(~~2~~x) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern shall notify the Division within 15 days of the suspension or dismissal.

(~~3~~xi) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

(b) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

R156-17b-303c. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that shall be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination(MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(3) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(4) Applicants taking the NAPLEX or MPJE examination shall pass the exams within six months from the date of the Division's approval for the applicant to take the exam. If the

applicant does not pass the required exam within six months, the pending license application shall be denied.

(~~4~~5) In accordance with Subsection 58-17b-305(1)(g), ~~[the examinations which shall be passed by]~~an applicant applying for licensure as a pharmacy technician ~~[are:~~

~~—————(a) the Utah Pharmacy Technician Law and Rule Examination, taken as part of the application for licensure, with a minimum passing score of 88 percent; and~~

~~—————(b)]shall pass~~ the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

(~~5~~6) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

R156-17b-303d. Qualifications for Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the ~~[State]~~Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

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

subsequent offense(s): \$5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):

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

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

(4) conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):

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

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

(5) buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret, in violation of Subsection 58-17b-501(5):

initial offense: \$100 - \$500

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

(7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):

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

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

(8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):

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

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

(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

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

subsequent offense(s): \$2,500 - \$10,000

(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

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

subsequent offense(s): \$1,500 - \$5,000

(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

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

subsequent offense(s): \$2,500 - \$10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500

subsequent offense(s): \$1,000 - \$2,500

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

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

subsequent offense(s): \$2,500 - \$10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000

subsequent offense(s): \$5,500 - \$10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or

adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

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

subsequent offense(s): \$2,500 - \$10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):

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

subsequent offense(s): \$2,500 - \$10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

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

subsequent offense(s): \$2,500 - \$10,000

(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

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

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

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: \$100 - \$500

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

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(27) preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):

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

subsequent offense(s): \$2,500 - \$5,000

(28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: \$250 - \$500

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

(29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$250 - \$500

subsequent offense(s): \$500 - \$750

(30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):

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

subsequent offense(s): \$2,500 - \$10,000

(31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):

initial offense: \$50 - \$100

subsequent offense(s): \$200 - \$300

(33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):

initial offense: \$100 - \$200

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

(34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):

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

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

(35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):

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

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

(36) failing to return ~~[or providing false information on]~~ a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):

initial offense: \$100 - \$250

subsequent offense(s): \$300 - \$500

(37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):

initial violation: \$50 - \$100

failure to comply within determined time: \$250 - \$500

subsequent violations: \$250 - \$500

failure to comply within established time: \$750 - \$1,000

(38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):

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

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

(39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):

Pharmacist initial offense: \$100 - \$250

Pharmacist subsequent offense(s): \$500 - \$2,500

Pharmacy initial offense: \$250 - \$1,000

Pharmacy subsequent offense(s): \$500 - \$5,000

(41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):

Pharmacist initial offense: \$50 - \$100

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

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$1,000 - \$2,000

(42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):

Pharmacy personnel initial offense: \$500 - \$2,500

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

Pharmacy: \$2,000 per occurrence

(43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to \$10,000

(44) failing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):

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

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

(45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):

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

subsequent offense: \$5,000 - \$10,000

(46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(48) failing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection R156-17b-502(20):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):

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

subsequent offense: \$2,000 - \$10,000

(50) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):

Pharmacist initial offense: \$100 - \$300

Pharmacist subsequent offense(s): \$500 - \$1,000

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$500 - \$1,250

(51) practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):

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

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

(52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):

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

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

(53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):

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

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

(54) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):

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

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

(55) 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, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000

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

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

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

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

(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

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

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

(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$100 - \$2,000

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

(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

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

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

(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

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

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

(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500

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

(62) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500

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

(63) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500

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

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

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

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

(65) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician 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: \$100 - \$500

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

(66) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500

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

(67) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500

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

(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (71) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (72) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501 (2):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (74) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (75) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (76) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:
 initial offense: \$1,000 - \$5,000
 subsequent offense(s) \$5,000 - \$10,000
 (78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (85) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (87) any other conduct which constitutes unprofessional or unlawful conduct:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

- (2) failing to comply with the USP-NF Chapters 795 and 797;
- (3) failing to comply with the continuing education requirements set forth in these rules;
- (4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;
- (5) defaulting on a student loan;
- (6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;
- (7) failing to comply with administrative inspections;
- (8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;
- (9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;
- (10) abandoning a pharmacy or leaving prescription drugs accessible to the public;
- (11) failing to identify licensure classification when communicating by any means;
- (12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);
- (13) allowing any unauthorized persons in the pharmacy;
- (14) failing to offer to counsel any person receiving a prescription medication;
- (15) failing to pay an administrative fine that has been assessed in the time designated by the Division;
- (16) failing to comply with the PIC standards as established in Section R156-17b-603;
- (17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;
- (18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);
- (19) dispensing medication that has been discontinued by the FDA;
- (20) failing to keep or report accurate records of training hours;
- (21) failing to provide PIC information to the Division within 30 days of a change in PIC;
- (22) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;
- (23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and
- (24) effective November 30, 2014, failing to comply with prescription container label standards established in USP-NF Chapter 17.

R156-17b-601. Operating Standards - Pharmacy Technician.

In accordance with Subsection 58-17b-102(53), practice as a licensed pharmacy technician is defined as follows:

- (1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:
- (a) receiving written prescriptions;
 - (b) taking refill orders;
 - (c) entering and retrieving information into and from a database or patient profile;
 - (d) preparing labels;
 - (e) retrieving medications from inventory;
 - (f) counting and pouring into containers;
 - (g) placing medications into patient storage containers;
 - (h) affixing labels;
 - (i) compounding;
 - (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(53);
 - (k) accepting new prescription drug orders left on voicemail for a pharmacist to review;
 - (l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:
 - (i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;
 - (ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);
 - (iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;
 - (iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;
 - (v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;
 - (vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:
 - (A) process for technician training and ongoing competency assessment and documentation;
 - (B) process for supervising technicians who check medications;
 - (C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology that will be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes which identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(53)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(53)(b)(iv), does not include authorization of a refill of a legend drug.

(3) Pharmacy technicians~~[, including no more than one pharmacy technician in training per shift,]~~ shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(2)(s).

(4) No more than one pharmacy technician-in-training per shift shall practice in a pharmacy. A pharmacy technician-in-training shall practice only under the direct supervision of a pharmacist.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

- (1) meeting the following criteria:
 - (a) hold a Utah pharmacist license that is active and in good standing;
 - (b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;
 - (c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;
 - (d) provide direct, on-site supervision to:
 - (i) no more than two pharmacy interns during a working shift ~~except as provided in Subsection (ii); and~~
 - (ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:
 - (A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and
 - (B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and
 - (e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;
 - (2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;
 - (3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and
 - (4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-608. [Reserved]Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the pharmacist-in-charge or other responsible employee:

- (1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;
- (2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;
- (3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

~~(4) provide for an electronic, telephonic, or written communication mechanism for a pharmacist, or a pharmacy intern working under the direct supervision of a pharmacist, to offer counseling to the patient as defined in Section 58-17b-613, including documentation of such counseling; and~~

~~(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.~~

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

~~(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.~~

~~(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.~~

~~(1-3) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:~~

- ~~(a) the name and description of the prescription drug;~~
- ~~(b) the dosage form, dose, route of administration and duration of drug therapy;~~
- ~~(c) intended use of the drug, when known, and expected action;~~
- ~~(d) special directions and precautions for preparation, administration and use by the patient;~~
- ~~(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;~~
- ~~(f) techniques for self-monitoring drug therapy;~~
- ~~(g) proper storage;~~
- ~~(h) prescription refill information;~~
- ~~(i) action to be taken in the event of a missed dose;~~
- ~~(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and~~
- ~~(k) the date after which the prescription should not be taken or used, or the beyond use date.[~~

~~(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.~~

~~(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.]~~

~~(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.[~~

~~(5) Counseling shall be:~~

~~(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;~~

~~(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and~~

~~_____ (c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.]~~

~~_____ (6)5) Only a pharmacist or pharmacy intern may [verbally]orally provide [drug information]counseling to a patient or patient's agent and answer questions concerning prescription drugs.[~~

~~_____ (7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:~~

~~_____ (a) date of the delivery;~~

~~_____ (b) unique identification number of the prescription drug order;~~

~~_____ (c) patient's name;~~

~~_____ (d) patient's phone number or the phone number of the person picking up the prescription; and~~

~~_____ (e) signature of the person picking up the prescription.]~~

~~_____ (8)6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:~~

~~_____ (a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;~~

~~_____ (b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and~~

~~_____ (c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.~~

~~_____ (7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the patient's drugs.~~

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to:

~~_____ (i) permit detection of entry at all times when the facility is closed; and~~

~~_____ (ii) provide notice of unauthorized entry to an individual who is able to respond quickly and reasonably assess the entry and resolve the matter.~~

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(e) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;
 (iii) component manufacturer or suitable identifying number;
 (iv) container specifications (e.g. syringe, pump cassette);
 (v) unique lot or control number assigned to batch;
 (vi) beyond use date of batch prepared products;
 (vii) date of preparation;
 (viii) name, initials or electronic signature of the person or persons involved in the preparation;
 (ix) names, initials or electronic signature of the responsible pharmacist;
 (x) end-product evaluation and testing specifications, if applicable; and
 (xi) comparison of actual yield to anticipated yield, when appropriate;
 (f) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:
 (i) the unique lot number assigned to the batch;
 (ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;
 (iii) quantity;
 (iv) beyond use date and time, when applicable;
 (v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and
 (vi) device-specific instructions, where appropriate;
 (g) the beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;
 (i) sources of drug stability information shall include the following:
 (A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;
 (B) manufacturer recommendations; and
 (C) reliable, published research;
 (ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and
 (iii) methods for establishing beyond use dates shall be documented; and
 (h) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.
 (4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:
 (a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'
 (b) R156-1, General Rule of the Division of Occupational and Professional Licensing;
 (c) Title 58, Chapter 17b, Pharmacy Practice Act;
 (d) R156-17b, Utah Pharmacy Practice Act Rule;
 (e) Title 58, Chapter 37, Utah Controlled Substances Act;
 (f) R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;
 (h) R156-37f, Controlled Substance Database Act Rule;
 (i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;
 (j) current FDA Approved Drug Products (orange book); and
 (k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.
 (5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.
 (6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.
 (7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.
 (8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.
 (9) The facility or parent company shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.
 (10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.
 (11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.
 (12) Pharmacists or other responsible individuals shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.
 (13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.
 (14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.
 (15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.
 (16) If the pharmacy includes a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity

related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities shall undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(9) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(10) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(11) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form;

and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(12) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesaler only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesaler under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(13) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(14) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102([4]16)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(15) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(16) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(17) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(18) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(19) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(20) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah

licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of Class A or B pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617c. Class E Pharmacy Operating Standards -- Animal [Euthanasia]Control.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal [euthanasia]control facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia or immobilization of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia or immobilization purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled

substances and is responsible for the inventory of the animal [euthanasia]control facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval which include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia or immobilization of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

(2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia or immobilization upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia or immobilization.

KEY: pharmacists, licensing, pharmacies

Date of Enactment or Last Substantive Amendment:
[December 23, 2013]2014

Notice of Continuation: February 23, 2010

Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and
Professional Licensing
R156-24b-505
Trigger Point Dry Needling - Education
and Experience Required - Registration**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38657

FILED: 06/30/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 367 was passed during the 2014 General Legislative Session. The Division, in collaboration with the Physical Therapist Licensing Board, was charged with establishing criteria for approving a trigger point dry needling course as described in Subsection 58-24b-505(1)(b), and any additional requirements deemed necessary to practice trigger point dry needling procedures by physical therapists.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-24b-505(1) is being added to the rule to establish the criterion for Division approval of a trigger point dry needling course. A course will be approved by the Division that includes the hours and treatment sessions specified in Section 58-24b-505 and receives approval from the Utah Physical Therapy Association, American Physical Therapy Association, or Federation of State Boards of Physical Therapy. Subsection R156-24b-505(2) is added to establish general supervision as the level of supervision required during the 250 supervised trigger point dry needling patient treatment sessions. Subsection R156-24b-505(3) is added to identify requirements for a licensed health care provider to supervise a physical therapist providing 250 trigger point drug needling patient treatment sessions as part of a Division-approved course.

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. As a result of recent legislative changes which allow trigger point dry needling practice by physical therapists, the Division anticipates receiving applications from physical therapists desiring registration to practice this new procedure; however, the Division is unable to quantify an associated potential cost as a result of those new applications being submitted and processed by the Division.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to the segment of licensed physical therapists desiring registration to practice trigger point dry needling procedures and to the licensed health care providers who may supervise the course-related patient treatment sessions. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed physical therapists desiring registration to practice trigger point dry needling procedures and supervising licensed health care providers who may supervise the

course-related patient treatment sessions. Licensees and supervisors 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:** Individual patients of physical therapists registered to provide trigger point dry needling procedures may benefit from the availability of a treatment modality that was heretofore unavailable to them. The Division is unable to quantify potential costs or cost savings to individual patients resulting from the availability of this treatment modality due to a wide range of circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS:

Physical therapists desiring to obtain registration to practice trigger point dry needling procedures will need to enroll in, and successfully complete, a Division-approved course that includes 54 hours of in-person instruction and 250 supervised patient treatment sessions. A course of this rigor will undoubtedly carry a significant tuition cost, through participation is voluntary and will grant an expanded scope of practice not previously available to physical therapists until the recent passage of H.B. 367 (2014). A licensed health care provider providing supervision for the 250 patient treatment sessions may charge a fee for this supervision, to be paid by the enrolled student. In addition, the employment hours of a physical therapist enrolled in such a rigorous course may need to be reduced for the individual to complete the course requirements. The tuition, potentials supervisor fees, and reduction in employment hours could have a significant negative financial impact on a physical therapist who chooses to enroll in a dry needling course. As a result of a wide range of varying circumstances, the Division is unable to quantify these potential costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

This filing responds to Legislative action under H.B. 367 (2014) requiring that rules be implemented to govern education and supervision in respect to dry needling therapy. Any costs to businesses will be incidental to the business's employment of licensed physical therapists, are anticipated to be minimal, and were considered by the Legislature in determining to regulate the practice of dry needling.

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 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-24b. Physical Therapy Practice Act Rule.
R156-24b-505. Trigger Point Dry Needling - Education and Experience Required - Registration.

(1) A course approved by one of the following organizations meets the standards of Section 58-24b-505 if it includes the hours and treatment sessions specified in Section 58-24b-505:

- (a) Utah Physical Therapy Association (UPTA);
- (b) American Physical Therapy Association (APTA); or
- (c) Federation of State Boards of Physical Therapy (FSBPT).

(2) The level of supervision required during the course established under Section 58-24b-505 is general supervision, as defined in R156-1-102a(4)(c).

(3) General supervision shall be provided by a licensed health care provider who:

- (a) has a scope of practice that includes dry needling; and
- (b) can demonstrate two years of dry needling practice techniques.

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

Date of Enactment or Last Substantive Amendment: [June 23,] 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
R156-53
Landscape Architects Licensing Act Rule

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 38639
 FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Landscape Architects Board reviewed the rule and determined minor amendments were needed pertaining to examination requirements and the

reinstatement requirements of a license which has expired beyond two years.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-53-302b(3) is deleted which removes the requirement to take and pass the "open book, take home Utah Law and Rule Examination" as it is no longer part of the application for licensure. Subsection R156-53-308(3) is added that an applicant for reinstatement for licensure as a landscape architect, whose license has been expired for two or more years, shall provide documentation of having completed 16 hours of continuing education.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-53-101 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 landscape architects and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: The proposed amendments only apply to licensed landscape architects and applicants for licensure in that classification. 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 landscape architects and applicants for licensure in that classification. The Division anticipates the proposed amendments will not result in additional encumbrances for any party beyond what is currently identified by statute and rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed landscape architects and applicants for licensure in that classification. The Division anticipates the proposed amendments will not result in any additional costs or savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing modifies the requirements that an individual must meet in order to obtain a license. 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-53. Landscape Architects Licensing Act Rule.
R156-53-302b. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsection 58-53-302(1)(e), an applicant for licensure shall pass the following examinations:

(1) the Landscape Architect Registration Examination (LARE) of the Council of Landscape Architectural Registration Boards; or

(2) the Uniform National Exam for Landscape Architects (UNE) of the Council of Landscape Architectural Registration Boards; ~~and~~

~~(3) as part of the application for licensure, pass all questions on the open book, take home Utah Law and Rule Examination].~~

R156-53-308. Reinstatement of a Landscape Architect License which has Expired Beyond Two Years.

In addition to the requirements in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a landscape architect, whose license has been expired for two or more years, shall:

(1) upon request by the Division, meet with the Board to evaluate the applicant's ability to safely and competently practice landscape architecture; ~~and~~

(2) pass the Landscape Architect Registration Examination (LARE) of the Council of Landscape Architectural Registration Boards if it is determined by the Board and Division that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice landscape architecture; and

(3) provide documentation that the licensee, within two years prior to the date of the application, completed 16 hours of continuing education.

KEY: landscape architects, licensing

Date of Enactment or Last Substantive Amendment: ~~October 13, 2011~~ 2014

Notice of Continuation: February 7, 2013

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-53-101

**Commerce, Occupational and
Professional Licensing
R156-55b
Electricians Licensing Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38648

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division, Electricians Licensing Board, and Construction Services Commission are proposing amendments to the rule to make minor technical corrections, reference applicable administrative penalties for unlawful and unprofessional conduct, and provide clarification relating to the supervision and conduct of licensees.

SUMMARY OF THE RULE OR CHANGE: In Section R156-55b-302c, the proposed amendments update the admission requirements to sit for required electrical exams and remove the requirement to obtain preapproval from the Division. Additionally, in Subsection R156-55b-302c(5), the term "on or after December 31, 2010" is deleted since it is no longer applicable and Subsection R156-55b-302c(5)(b) is deleted as it is also no longer applicable. Section R156-55b-305 is a new section that provides the requirements for licensure by endorsement are identified in Section 58-1-302. In Section R156-55b-401, the proposed amendments define and clarify the conduct of the apprentice and supervising electrician as it relates to Subsection 58-55-302(3)(j). In Section R156-55b-501, the proposed amendments add as unprofessional conduct, failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j), and update other language in the section to maintain consistency. Section R156-55b-502 is a new section that references the applicable administrative penalties applicable to licensees and other persons governed by this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-55-308(1)

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 various classifications of licensed electricians 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 various classifications of licensed electricians 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 various classifications of licensed electricians and applicants for licensure in those classifications. The Division anticipates that these proposed amendments will not result in additional encumbrances for any party beyond what is currently identified by statute or rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to various classifications of licensed electricians and applicants for licensure in those classifications. The Division anticipates no additional costs or savings as a result of the proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing incorporates several statutory and rule sections that apply to licensed electricians. In addition, it clarifies the point at which a prospective licensee is authorized to take the license examination and the type of supervision that must be exercised over an apprentice. The substantive amendments govern the licensing process for individuals; therefore, 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/30/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
 R156-55b. Electricians Licensing Act Rule.**

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) ~~Upon completing the requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b, the applicant shall obtain approval from the Division permitting the applicant to take the examination.~~ Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.

(5) ~~(a) On or after December 31, 2010, if~~ if an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

~~(b) Prior to December 31, 2010, if an applicant passed any part of the examination but did not pass the entire examination, the applicant may use any previously passed part of the examination to pass the entire examination until December 31, 2011. Thereafter, the applicant shall retake the entire examination to support any subsequent application for licensure.~~

R156-55b-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

~~(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the Division to insure that the work installed by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.~~

~~(2) An apprentice may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship. In the~~

~~seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j)(i).~~

~~(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).~~

~~(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with Subsection 58-55-302(3)(j), Sections 58-55-501, 58-55-502, and R156-55b-501.~~

~~(4) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:~~

~~(a) the supervisor and apprentice employees [are] shall be employees of the same electrical contractor;~~

~~(b) [the supervisor and apprentice employees providing work or supervision of work for another electrical contractor are considered as employees of the electrical contractor on the project; or~~

~~(c) the employees of a licensed professional organization who provide workers under a contract with an electrical contractor are considered as employees of the electrical contractor with regard to the work performed on the project; [the electrical contractor may contract with a licensed professional employer organization to employ such persons.~~

~~(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).~~

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

~~(1) failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j).~~

~~(2) fail[ure of]ing as a licensee to carry a copy of a current license at all times when performing electrical work;~~

~~(3) fail[ure of]ing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and~~

~~(4) fail[ure of]ing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.~~

R156-55b-502. Administrative Penalties.

~~(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties applicable under this rule.~~

~~(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.~~

KEY: occupational licensing, licensing, contractors, electricians

Date of Enactment or Last Substantive Amendment: [September 12, 2011] 2014

Notice of Continuation: October 4, 2011

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-308(1)

Commerce, Occupational and Professional Licensing **R156-67** Utah Medical Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38649

FILED: 06/24/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Physicians Licensing Board and Osteopathic Physician and Surgeon's Licensing Board reviewed the rule and determined amendments needed to be made to reflect current standards.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-67-302d(i) is added to require a candidate who has failed exams three times to provide a narrative to the Division and Board as part of the application process. The narrative will assist in determining qualifications for licensure. In Section R156-67-302e, amendments delete the requirement for a candidate who fails specific exams three times to complete additional education before being able to sit for the final exam. The reason for the change is that, starting in August 2014, the Division will not be responsible for testing approvals and management of testing issues. Instead, the Federation of State Medical Boards will approve and manage all testing issues for all member states. Sections R156-67-502 and R156-67-602 are updated to reflect the current edition (2012-2013) of the American Medical Association (AMA) Code of Ethics.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-67-101 and Subsection 58-1-106(1) and Subsection 58-1-202(1)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Code of Medical Ethics, published by American Medical Association (AMA), 2012-2013

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. It should also be noted that an AMA Code of Ethics book costs approximately \$60 to purchase on the American Medical Association website.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed physicians/surgeons and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to licensed physicians/surgeons and applicants for licensure in that classification. 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 physicians/surgeons and applicants for licensure in that classification. If an individual wishes to purchase an updated copy of the AMA Code of Ethics book, it costs approximately \$60 to purchase on the American Medical Association website.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed physicians/surgeons and applicants for licensure in that classification. If an individual wishes to purchase an updated copy of the AMA Code of Ethics book, it costs approximately \$60 to purchase on the American Medical Association website.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing modifies the licensing process for an individual who fails a licensing exam multiple times. In addition, it updates professional conduct standards that are promulgated within the industry and incorporated by reference. These amendments affect individuals who license and practice within the medical profession. Therefore, they are not anticipated to have any 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 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.**

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(i) Candidates who fail any combination of the USMLE, FLEX and NBME three times must provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years;

or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times. [~~(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.~~]

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology.

However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603; and

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", [2008-2009]2012-2013 edition, which is hereby incorporated by reference.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the "AMA Code of Medical Ethics", [2008-2009]2012-2013 edition, which is hereby incorporated by reference.

KEY: physicians, licensing

Date of Enactment or Last Substantive Amendment: [January 7,]2014

Notice of Continuation: March 14, 2011

Authorizing, and Implemented or Interpreted Law: 58-67-101; 58-1-106(1); 58-1-202(1)

Environmental Quality, Water Quality

R317-12

**General Requirements: Tax Exemption
for Water Pollution Control Equipment**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE NO.: 38661
 FILED: 07/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a revision of the rule in response to H.B. 31 (2014 General Legislative Session) concerning tax exemptions available for a Water Pollution Control Facility or Freestanding Pollution Control Property.

SUMMARY OF THE RULE OR CHANGE: H.B. 31 (2014) created a new class of equipment eligible for certification, the Freestanding Pollution Control Property. Additionally, H.B. 31 (2014) clarified the types of equipment that are intended to be eligible and ineligible. Substantive changes include: 1) the title of the rule has been changed from "General Requirements: Tax Exemption for Water Pollution Control Equipment" to "Certification of Water Pollution Control Facility or Freestanding Pollution Control Property" in order to clarify that the Division of Water Quality's (DWQ) roll is the issuance of certifications, not the granting of a tax exemption; 2) creation of an "Authority, Purpose, and Scope" section for consistency with other Title R317 rules; 3) creation of a "Definitions" section for consistency with other Title R317 rules; 4) Freestanding Pollution Control Properties are now eligible for certification according to H.B. 31 (2014); 5) "Conditions for Eligibility", "Limitations on Certification", "Exemptions from Certification", and "Duty to Issue Certification" have been combined into a single section titled "Issuance of Certification"; and 6) the wording of the rule is simplified and clarified to explain the role of DWQ in the tax exemption process for these types of equipment. No substantive elements were deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-12-102 and Sections 19-12-201 through 19-12-203 and Sections 19-12-301 through 19-12-305

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state budget will not be affected by the changes to the certification process for pollution control facilities and the addition of freestanding pollution control properties now defined in the rule. The process will use existing staff and resources for completing the review process, but the number of additional requests are not expected to affect the overall cost or savings.
- ◆ **LOCAL GOVERNMENTS:** Local governments will not be affected by the changes to the certification process for pollution control facilities and freestanding pollution control properties as they are not involved with this certification process.
- ◆ **SMALL BUSINESSES:** Small businesses can potentially realize a cost savings because of the new eligibility of freestanding pollution control property for certification and the resulting tax savings.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be affected because the rule and its supporting statutes have been written such that the only benefit is to businesses and small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Generally, there are no compliance costs since this tax exemption may help the affected persons defray some of the expected costs of the pollution control equipment, but the Division of Water Quality can bill the time it takes to review the application for certification to the applicant according to the rates set forth in the approved fee schedule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule change has a benefit for businesses because it provides them with a sales and use tax exemption for installing pollution control facilities and utilizing freestanding pollution control properties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WATER QUALITY
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
~~[R317-12. General Requirements: Tax Exemption for Water Pollution Control Equipment.~~
R317-12-1. Application.

~~Application for certification shall be made on forms provided by the State Department of Environmental Quality, and shall include all information requested thereon and such additional reasonably necessary information as is requested by the executive secretary of the Water Quality Board.~~

R317-12-2. Eligibility for Certification.

~~Certification shall be made only for taxpayers who are owners, operators (under a lease) or contract purchasers of a trade or business that utilizes Utah property with a pollution control facility to prevent or minimize pollution.~~

R317-12-3. Review Period.

~~_____~~ Date of filing shall be date of receipt of the final item of information requested and this filing date shall initiate the 120-day review period.

R317-12-4. Conditions for Eligibility.

~~_____~~ (1) All materials, equipment and structures (or part thereof) purchased, leased or otherwise procured and services utilized for construction or installation in a water pollution control facility shall be eligible for certification, provided:

~~_____~~ (a) such materials, equipment, structures (or part thereof), and services installed, constructed, or acquired result in a demonstrated reduction of pollutant discharges, and

~~_____~~ (b) the primary purpose of such materials, equipment, structures (or part thereof), and services is preventing, controlling, reducing, or disposing of water pollution.

~~_____~~ (2) The above includes expenditures which reduce the amount of pollutants produced as well as expenditures which result in removal of pollutants from waste streams. The materials, equipment, structures (or part thereof), and services that are necessary for the proper functioning of water pollution control facilities meeting the requirements of (1)(a) and (b) above, including equipment required for compliance monitoring, shall be eligible for certification.

R317-12-5. Limitations on Certification.

~~_____~~ Applications for certification shall be certified by the executive secretary of the Water Quality Board after consultation with the State Tax Commission and only if:

~~_____~~ (1) plans for the water pollution control facility in question require review and approval by the Director and have been so approved, or

~~_____~~ (2) the water pollution control facility is specifically required by the Water Quality Board, including facilities constructed for pretreatment of wastes prior to discharge to a public sewerage system in accordance with R317-8-8.1, but excluding facilities which are permitted by rule under R317-6-6.2 (Ground Water Discharge Permit by Rule) unless required to obtain an individual permit by the Director, or

~~_____~~ (3) the water pollution control facility is required and permitted by another Division within the Department of Environmental Quality, or

~~_____~~ (4) the water pollution control facility eliminates or reduces the discharge of pollutants which would be regulated by the Division, if such pollutants were discharged.

R317-12-6. Exemptions from Certification.

~~_____~~ The following items are specifically not eligible for certification:

~~_____~~ (1) materials and supplies used in the normal operation or maintenance of the water pollution control facilities;

~~_____~~ (2) materials, equipment, and services used to monitor water, unless required for a permit or approval from a Division within the Department of Environmental Quality;

~~_____~~ (3) materials, equipment, and services for collection, treatment, and disposal of human wastes, unless the primary purpose of such materials, equipment and services is the treatment of industrial wastes;

~~_____~~ (4) materials, equipment and services used in removal, treatment, or disposal of pollutants from contaminated ground water, if

the applicant caused the ground water contamination by failing to comply with applicable permits, approvals, rules, or standards existing at the time the contamination occurred.

R317-12-7. Duty to Issue Certification.

~~_____~~ Upon determination that facilities described in any application under R317-12-1 satisfy the requirements of these rules and Sections 19-2-123 through 19-2-127 the executive secretary of the Water Quality Board shall issue a certification of pollution control facility to the applicant.

R317-12-8. Appeal and Revocation.

~~_____~~ (1) A decision of the executive secretary of the Water Quality Board may be reviewed by filing a Request for Agency Action as provided in R305-7.

~~_____~~ (2) Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.]

R317-12. Certification of Water Pollution Control Facility or Freestanding Pollution Control Property.**R317-12-1. Authority, Purpose and Scope.**

1.1 Authorization. These rules are administered by the division authorized by Title 19 Chapter 12.

1.2 Purpose. The purpose of this rule is to protect public health and the environment by encouraging industries to install Pollution Control Facilities and Freestanding Pollution Control Properties through sales and use tax incentives.

1.3 Scope. This rule shall apply to purchases described in Section 19-12-201.

R317-12-2. Definitions.

"Director" means the director as defined in Section R317-1-1.

"Freestanding Pollution Control Property" means freestanding pollution control property as defined in Subsection 19-12-102(6).

"Treatment Works" means treatment works as defined in Section R317-1-1.

"Waste" means waste as defined in Section R317-1-1.

"Water Pollution" means pollution as defined in Section R317-1-1.

R317-12-3. Application for Certification.

3.1 An application for certification shall be made on forms provided by the Director.

3.2 The application shall include all information requested thereon and such additional information as is requested by the Director. At a minimum, the application shall contain:

A. a description of the Pollution Control Facility or Freestanding Property;

B. a description of the property, product or service for a purchase or lease of property, a part, or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201;

C. the existing or proposed operational procedure for the Pollution Control Facility or Freestanding Pollution Control Property; and

D. a statement of the purpose served or to be served by the Pollution Control Facility or Freestanding Pollution Control Property.

3.3 The Director may require an application to contain additional information that the Director finds necessary to determine whether to grant certification under Section 19-12-303.

R317-12-4. Issuance of Certification.

4.1 The date the application is filed shall be the date of receipt by the Director of the final item of information requested, and this filing date shall initiate the 120-day review period under Section 19-12-303.

4.2 The Director shall issue a certification of a Pollution Control Facility or a Freestanding Pollution Control Property to the applicant if the Director determines that:

A. the application meets the requirements of the Pollution Control Act in Section 19-12-101;

B. the facility or property that is the subject of the application is a Pollution Control Facility or a Freestanding Pollution Control Property as defined in Section 19-12-102;

C. the person who files the application is a person described in Section 19-12-301; and

D. the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201.

4.3 If the Director denies certification under this Section to a person who files an application, the Director shall provide a written statement of the reason for the denial to the person no later than 120 days after the date described in Subsection R317-12-4.1.

4.4 The Director may issue one certification for one or more Pollution Control Facilities or Freestanding Pollution Control Properties that constitute an operational unit.

4.5 If the Director does not issue or deny a certification within 120 days of the date described in Subsection R317-12-4.1, the Director shall issue a certification to the person at the person's request.

R317-12-5. Revocation of Certification and Appeal.

5.1 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-12-304.

5.2 An appeal of a denial of certification or a revocation of certification by the Director may be contested by filing a Request for Agency Action as provided in Rule R305-7.

KEY: water pollution, tax exemptions, equipment

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

Notice of Continuation: January 25, 2012

Authorizing, and Implemented or Interpreted Law: [~~19-2-123; 19-2-124; 19-2-125; 19-2-126; 19-2-127~~]19-12-101, 19-12-102, 19-12-201 through 19-12-203, 19-12-301 through 19-12-305

**Health, Disease Control and
Prevention, Epidemiology
R386-80
Local Public Health Emergency
Funding Protocols**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38662

FILED: 07/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule has been written in response to S.B. 20, passed by the Utah Legislature in the 2009 General Legislative Session, that requires the Utah Department of Health establish a Local Public Health Emergency Funding Program and requirements and protocols for the program.

SUMMARY OF THE RULE OR CHANGE: Upon the occurrence of local public health emergency, a local health department may be able to access the funding appropriated by the legislature. The rule establishes that a Memorandum of Agreement between the Utah Department of Health and the Local Health Officers Association be entered into in order to define more specifically public health emergency, types of reimbursable expenses, and a formula for the distribution of funds if there are multiple public health departments emergencies at similar times with not enough funding.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-38

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule outlines how local health departments can request reimbursement for expenses incurred during a local public health emergency. Costs to the state would include staff time necessary to process reimbursement requests. The Division cannot estimate the total cost as the Division has no way of knowing the possible number of public health emergencies and the total of reimbursement requests that might be received.

♦ **LOCAL GOVERNMENTS:** The state funding allocated per S.B. 20 assists the local health departments should an emergency occur. These funds will provide additional funding for emergency needs.

♦ **SMALL BUSINESSES:** This rule outlines how local health departments can request reimbursement for expenses incurred during a local public health emergency. Small business are not involved the reimbursement process and will not be affected.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule outlines how local health departments can request reimbursement for expenses incurred during a local public health emergency. Persons other than local health departments are not involved the reimbursement process and will not be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule outlines how local health departments can request reimbursement for expenses incurred during a local public health emergency. Costs to local health departments will

include primarily time to complete reimbursement requests. The Division cannot estimate the total cost as the Division has no way of knowing the possible number of public health emergencies and the total of reimbursement requests that local health departments might submit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should have no adverse effect of business because it will provide additional funding for emergency needs.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
EPIDEMIOLOGY
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:

♦ Jennifer Brown by phone at 801-538-6131, by FAX at 801-538-9913, or by Internet E-mail at jenniferbrown@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R386. Health, Disease Control and Prevention, Epidemiology.

R386-80. Local Public Health Emergency Funding Protocols.

R386-80-1. Authority and Purpose.

(1) This rule establishes a local health emergency assistance program to be administered by the Utah Department of Health. This program establishes the Public Emergency Fund to be funded with money appropriated by the legislature or otherwise made available to the program fund as defined by this rule

(2) Monies that the legislature appropriates to the Program Fund are non-lapsing and must be used exclusively to provide emergency funding to local health departments. However, the Department may use money in the Program to cover its costs of administering the Program.

(3) Any interest earned on the balance of the funds in the Program shall be deposited to the General Fund.

R386-80-2. Definitions.

(1) Department - means the Utah Department of Health.

(2) Local Health Department - means a county or multicounty local health department established under Utah Code Title 26A.

(3) Local Public Health Emergency - means an unusual event or series of events causing or resulting in a substantial risk or potential risk to the health of a significant portion of the population within the boundary of a local health department.

(4) Program - means the local health emergency assistance program established under this section.

(5) Program Fund - means money that the Legislature appropriates to the Department for use in the Program and other monies otherwise made available for use in the Program.

R386-80-3. Reimbursement of Local Health Departments.

(1) Upon the occurrence of a local public health emergency by the local health officer with the concurrence by the Executive Director of the Department, the local health department is eligible to receive reimbursement through the Public Emergency Funding Program for expenses incurred in responding to a local health emergency to the extent funding is available.

(2) The request for reimbursement from the fund shall include an itemized list of expenses incurred associated with the public health emergency. The list of expenses shall be in the format directed by the Department. The local health department is required to match funds received from the Program Fund. The total of the program reimbursement and the local match cannot exceed the total dollars expended on the emergency.

(3) If the Department receives requests for emergency funding from multiple local health departments during a similar time period for the same public health emergency, and the requests exceed the balance of the funding available, the Department shall allocate the distribution of available funds by an agreed upon formula with the Local Health Officers Association. Information contained in the local health department request for funding is subject to both audit and approval by the Department.

(4) The Local Health Officers Association and the Department shall, through a Memorandum of Agreement, include more specifically what constitutes a public health emergency, types of reimbursable expenses, and the formula to be used if multiple public health emergencies occur at similar times with not enough funding available.

R386-80-4. Department Reports.

(1) The Department shall submit a report each September to the Health and Human Services Interim Committee of the Utah Legislature summarizing program activities. The report shall consist of:

(a) A description of the requests for reimbursement from local health departments during the preceding 12 months;

(b) The amount of each reimbursement made from the Program Fund to local health departments; and

(c) The current balance of the Program Fund.

(2) A copy of the report shall also be submitted to the appropriations subcommittee designated by the Executive Appropriations Committee of the Legislature.

R386-80-5. Record Keeping.

(1) The Department shall keep all financial records related to distribution of funds to local health departments according to established rules for such financial documents.

KEY: public health emergency

Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 26-1-38

**Health, Disease Control and
Prevention, Environmental Services
R392-104
Feeding Disadvantaged Groups**

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 38656
FILED: 06/27/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule has been written in response to H.B. 176, recently passed in the 2014 General Legislative Session, to address feeding disadvantaged groups.

SUMMARY OF THE RULE OR CHANGE: This new rule outlines the requirements charitable groups need to meet in order to feed disadvantaged groups. The rule also allows charitable groups who meet the rule definition to be exempt from obtaining food handler permits, food safety manager certification, and operating permits from local health departments, but still need to handle food safely and operate safely.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2 and Section 26-15-5 and Title 26, Chapter 15a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings at the state level. Any costs will come out of existing budgets.
- ◆ **LOCAL GOVERNMENTS:** There will be some loss of permit fees as there will be a small number of operating permits and food handler fees no longer required. This number cannot be estimated due to lack of data available to the Department. Local health department administration costs for this rule will come out of existing budgets.
- ◆ **SMALL BUSINESSES:** There will be some cost savings as food handler and operating permits will no longer be required. This number cannot be determined due to lack of data available to the Department.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be some cost savings as food handler and operating permits will no longer be required. This number cannot be determined due to lack of data available to the Department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be some costs savings as food handler and operating permits will no longer be required. This number cannot be determined due to lack of data available to the Department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no impact on business because no businesses are providing this service at the present time.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Disease Control and Prevention, Epidemiology and Laboratory Services.

R392-104. Feeding Disadvantaged Groups.

R392-104-1. Scope.

(1) The scope of this rule is very narrow, only being directed at charitable organizations feeding disadvantaged groups as defined by this rule at an event free of any charge, admission fee or required or suggested donation.

(2) Charitable organizations which do not meet the requirements of R392-104, must meet the requirements of R392-100.

R392-104-2. Definitions.

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

(2) "Executive Director" means the Executive Director of the Utah Department Of Health or designated representative.

(3) "Disadvantaged Group" means a homeless or temporarily displaced group.

(4) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or designated representative.

(5) "Charitable Organization" means a group of any size who desire to feed disadvantaged groups under the requirements of this rule.

(6) "Event" for purposes of this rule means an organized activity where food is offered free of any charge, admission fee or required or suggested donation to a disadvantaged group.

R392-104-3. Permit and Certification Exemptions.

(1) Charitable organizations which feed disadvantaged groups as defined by this rule at an event free of any charge, admission fee or voluntary donation, are exempt from:

(a) the requirement of obtaining a food service operating permit from a local health department;

(b) the food safety manager requirements of R392-101; and

(c) the food handler requirements of R392-103.

(2) Charitable organizations that charge a fee or suggest a voluntary donation at the event are not exempt from R392-100, R392-101, and R392-103.

R392-104-4. Charitable Organization Requirements.

(1) A representative of a charitable organization shall notify the local health department of the intent to feed a disadvantaged group and shall provide a list of the date, location, and time of events and the charitable organization contact information. A charitable organization shall notify the local health department of any changes to the list before they occur.

(2) Charitable organizations shall contact a local health department and obtain information concerning food safety and safe food handler practices as required by this rule.

(3) Charitable organizations feeding a disadvantaged group shall provide instruction obtained from the local health department to those persons who will be functioning as food handlers at an event.

(4) Charitable organizations shall follow the food safety and safe food handler practices as provided in the information given by a local health department.

(5) Charitable organizations are subject to enforcement procedures outlined in UCA 26A-1-114.

R392-104-5 Local Health Department Requirements.

(1) Local health departments shall provide statewide uniform food safety and food handling information based on approved temporary event guidelines, Centers for Disease Control and Prevention five risk factors associated with food-borne illness outbreaks, and food safety principles as found in R392-100. Local health departments shall provide the charitable organization this information initially and after any updates have been made to the guidelines.

(2) Local health departments shall maintain a register of charitable organization events at no cost to the charitable organization.

KEY: public health, food services

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-5; 26-15a-104

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-7B
Nurse Aide Training and Competency
Evaluation Program

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 38655

FILED: 06/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule repeal is necessary because oversight for the Nurse Aide Training and Competency Evaluation Program (NATCEP) belongs to the Division of Health Systems Improvement (HSI). The Division of Medicaid and Health Financing (DMHF) and HSI will respectively repeal this rule and create a new rule to keep the requirements for this program ongoing and effective.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. (DAR NOTE: The proposed new Rule R432-45 is under DAR No. 38654 in this issue, July 15, 2014, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule repeal does not affect the state budget because NATCEP is ongoing and a new rule will continue to implement current requirements and future changes.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide NATCEP certification.
- ◆ **SMALL BUSINESSES:** This rule repeal does not affect small businesses because NATCEP is ongoing and a new rule will continue to implement current requirements and future changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule repeal does not affect Medicaid providers and Medicaid recipients because NATCEP is ongoing and a new rule will continue to implement current requirements and future changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule repeal does not affect a single Medicaid provider or a Medicaid recipient because NATCEP is ongoing and a new rule will continue to implement current requirements and future changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no effect on business as the rule will be replaced with a counterpart in another division.

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 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

~~[R414-7B. Nurse Aide Training and Competency Evaluation Program.~~

~~R414-7B-1. Introduction and Authority.~~

~~———— The Nurse Aide Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203, 101 Stat. 1330, Sec. 4211.(b)(5) (A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nurse aide (CNA) to provide quality nursing services to nursing facility residents.~~

~~R414-7B-2. Definitions.~~

~~———— (1) "Certified nurse aide" means any person who completes a nurse aide training and competency evaluation program (NATCEP) and passes the state certification examination.~~

~~———— (2) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nurse aide and a demonstration of the tasks the nurse aide is expected to perform as part of the aide's function.~~

~~———— (3) "Nurse aide" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.~~

~~———— (4) "Nurse Aide" Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nurse aide.~~

~~———— (5) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.~~

~~———— (6) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.~~

~~———— (7) "Renewal" means a two-year renewal for a CNA who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.~~

~~———— (8) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.~~

~~———— (9) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.~~

~~———— (10) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.~~

~~———— (11) "Train-the-Trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.~~

~~———— (12) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.~~

~~———— (13) "Utah Nursing Assistant Registry" means the state agency that approves nurse aide training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing, Medicare or Medicaid facility, certifies nurse aides who have completed a NATCEP, and renews certifications of qualified CNAs.~~

~~R414-7B-3. Program Access Requirements.~~

~~———— (1) A nurse aide is required to complete a NATCEP and become certified within 120 days of the first date of employment.~~

~~———— (2) An individual who was certified as a nurse aide on or before July 1, 1989, meets the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.~~

~~———— (3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:~~

~~———— (a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the Application for Certification Testing. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, the candidate must complete a NATCEP;~~

~~———— (b) an expired licensed nurse who can show proof of previous licensure in any state and who was in good standing with that state's professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination.~~

If the candidate does not pass either portion, the candidate must complete a NATCEP.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination within one year of the certification expiration date. If the candidate does not pass either portion, the candidate must retrain;

(d) any out-of-state CNA who is certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in that other state.

(4) An out-of-state expired CNA must complete a NATCEP in the state of Utah.

R414-7B-4. Competency Evaluation:

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nurse aides must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and a UNAR-approved representative must administer and evaluate the demonstration.

(b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved NATCEP;

(d) UNAR shall advise an individual who takes the competency evaluation that a record of the outcome of the evaluation will be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nurse aide's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. UNAR must develop this examination from a pool of test questions, only a portion of which to use in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(g) The competency evaluation must include a demonstration of the tasks the nurse aide is expected to perform as part of the nurse aide's function as a CNA;

(h) For the skills training component of the evaluation, UNAR shall establish a performance record for each NATCEP of major duties and skills that include:

(i) a list of the duties and skills that UNAR expects a CNA to learn in the program in accordance with this section;

(ii) a record that documents when the nurse aide performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the NATCEP, the NATCEP shall give the nurse aide a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation must have at least five performance tasks, all of which are included in the performance record. UNAR shall select five tasks for each nurse aide from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

R414-7B-5. Nurse Aide Training Requirements Under UNAR:

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a NATCEP and all new instructors must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a NATCEP must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with this section, UNAR shall review and render a determination of approval or disapproval of any NATCEP when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private NATCEP.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a NATCEP that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is 16 years of age and older on or before the first day that the student begins class; and

(b) shall include an orientation to the training program.

(7) The nurse aide training program must meet certain content requirements to be UNAR-approved.

(a) NATCEP must consist of at least 80 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting resident independence;

(v) respecting resident rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 16 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies before training in any facility. The skills training must ensure that each nurse aide demonstrates competencies in the following areas:

(i) Basic nursing skills:

(A) taking and recording vital signs;

(B) measuring and recording height;

(C) caring for residents' environment; and

(D) recognizing abnormal signs and symptoms of common diseases and conditions.

~~(ii) Personal care skills:~~
~~(A) bathing that includes mouth care;~~
~~(B) grooming;~~
~~(C) dressing;~~
~~(D) using the toilet;~~
~~(E) assisting with eating and hydration;~~
~~(F) proper feeding techniques; and~~
~~(G) skin care.~~
~~(iii) Basic restorative services:~~
~~(A) use of assistive devices in ambulation, eating, and dressing;~~
~~(B) maintenance of range of motion;~~
~~(C) proper turning and positioning in bed and chair;~~
~~(D) bowel and bladder training;~~
~~(E) care and use of prosthetic and orthotic devices; and~~
~~(F) transfer techniques.~~
~~(iv) Mental Health and Social Service Skills:~~
~~(A) modifying one's behavior in response to the resident's behavior;~~
~~(B) identifying developmental tasks associated with the aging process;~~
~~(C) training the resident in self-care according to the resident's ability;~~
~~(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;~~
~~(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and~~
~~(F) using the resident's family as a source of emotional support.~~
~~(v) Resident's rights:~~
~~(a) providing privacy and maintaining confidentiality;~~
~~(b) promoting the resident's right to make personal choices to accommodate the resident's needs;~~
~~(c) giving assistance in solving grievances;~~
~~(d) providing needed assistance in getting to and participating in resident and family groups and other activities;~~
~~(e) maintaining care and security of resident's personal possessions;~~
~~(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and~~
~~(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.~~
~~(8) Qualification of Instructors:~~
~~(a) a NATCEP must have a program coordinator who is a registered nurse with a current and active Utah license to practice;~~
~~(b) who is in good standing with DOPL;~~
~~(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and~~
~~(d) must have at least three hours of documented consulting time per month with the respective program.~~
~~(9) Nursing facility-based programs:~~
~~(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements;~~

~~(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and~~
~~(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.~~
~~(10) Before approval of a NATCEP, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach adult learners as defined by UNAR.~~
~~(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.~~
~~(12) Qualified personnel from the health professions may supplement the program coordinator and primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.~~
~~(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other qualified personnel.~~
~~(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.~~
~~(15) A NATCEP must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.~~
~~(16) A NATCEP must provide a classroom with the following:~~
~~(a) adequate space and furniture for the number of students;~~
~~(b) adequate lighting and ventilation;~~
~~(c) comfortable temperature;~~
~~(d) appropriate audio-visual equipment;~~
~~(e) skills lab equipment to simulate a resident's unit;~~
~~(f) clean and safe environment; and~~
~~(g) appropriate textbooks and reference materials.~~
~~(17) Initial post-approval and ongoing reviews:~~
~~(a) After the initial approval of a NATCEP, UNAR grants a one-year probationary period;~~
~~(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;~~
~~(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;~~
~~(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;~~
~~(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;~~

~~(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation, UNAR must make an on-site visit within one year of the self-evaluation.~~

~~(18) The training and evaluation program review must include:~~

- ~~(a) skills training experience;~~
- ~~(b) maintenance of qualified faculty members for both classroom and skills portions of the nurse aide training program;~~
- ~~(c) maintenance of the security of the competency evaluation examinations;~~
- ~~(d) a record of complaints received about the program;~~
- ~~(e) a record that each nursing facility has provided certified nurse aides with at least 12 hours of staff development training each year with the compensation for the training;~~
- ~~(f) curriculum content that meets state and federal requirements; and~~
- ~~(g) classroom facilities and required equipment that meet state, federal, and UNAR requirements.~~

~~(19) In addition to the nurse aide training that UNAR requires, a nursing facility shall provide an orientation program for any nurse aide whom it employs. For a student who is not employed at a nursing facility, the NATCEP shall provide an orientation of the clinical site for that student prior to beginning the clinical rotation. The orientation hours are not included in the required 80 hours of training. This orientation phase must include an explanation of:~~

- ~~(a) the organizational structure of the facility;~~
- ~~(b) the facility policies and procedures;~~
- ~~(c) the philosophy of care of the facility;~~
- ~~(d) the description of the resident population; and~~
- ~~(e) the employee rules.~~

R414-7B-6. Nurse Aide Registry:

~~(1) UNAR is the central registry for all certified nurse aides. This registry must identify all individuals who have successfully completed a NATCEP with a passing score of 75.~~

~~(2) A NATCEP must report to UNAR, within five days after the program ends, the names of all individuals who satisfactorily completed the program.~~

~~(3) UNAR processes all renewals for each nurse aide who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.~~

~~(4) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.~~

~~(5) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.~~

~~(6) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.~~

R414-7B-7. Limitations:

~~(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.~~

~~(2) UNAR must review and reapprove a NATCEP at least every two years.~~

~~(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.~~

~~(4) A nursing facility may employ a nurse aide for more than 120 days only if the aide has completed a NATCEP.~~

~~(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: December 28, 2010

Notice of Continuation: October 20, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3]

Health, Family Health and
Preparedness, Licensing
R432-45
Nurse Aide Training and Competency
Evaluation Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38654

FILED: 06/25/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The implementation of this rule is part of the responsibility of the Bureau of Health Facility Licensing and Certification; however this rule has been housed within Medicaid. This action adds the rule into Title R432 for oversight and maintenance by the Bureau of Health Facility Licensing and Certification. The purpose of this rule is to update and clarify definitions and nurse aide training requirements, and to specify behavior that constitutes certified nurse aide (CNA) misconduct.

SUMMARY OF THE RULE OR CHANGE: This new rule updates and clarifies definitions and nurse aide training requirements, and includes a section which specifies behavior that constitutes CNA misconduct. This new rule also makes other technical corrections to the old rule. (DAR NOTE: The proposed repeal of Rule R414-7B is under DAR No. 38655 in this issue, July 15, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because the changes in this rule only clarify CNA training requirements and specify CNA misconduct. These changes neither affect the provision of ongoing services to Medicaid clients nor reimbursement to Medicaid providers.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor provide certification for the Nurse Aide Training and Competency Evaluation Program.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because the changes in this rule only clarify CNA training requirements and specify CNA misconduct. These changes neither affect the provision of ongoing services to Medicaid clients nor reimbursement to Medicaid providers.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because the changes in this rule only clarify CNA training requirements and specify CNA misconduct. These changes neither affect the provision of ongoing services to Medicaid clients nor reimbursement to Medicaid providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because the changes in this rule only clarify CNA training requirements and specify CNA misconduct. These changes neither affect the provision of ongoing services to a Medicaid client nor reimbursement to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on business because this rule does not materially modify any of the existing processes.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-45. Nurse Aide Training and Competency Evaluation Program.

R432-45-1. Introduction and Authority.

The Nurse Aide Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211.(b)(5) (A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nurse aide (CNA) to provide quality nursing services to nursing facility residents.

R432-45-2. Definitions.

(1) "Certified nurse aide" means any person who completes a nurse aide training and competency evaluation program (NATCEP) and passes the state certification examination.

(2) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nurse aide and a demonstration of the tasks the nurse aide is expected to perform as part of the aide's function.

(3) "Nurse aide" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(4) "Nurse Aide Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nurse aide.

(5) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(6) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(7) "Renewal" means a two-year renewal for a CNA who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(8) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(9) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

(10) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

(11) "Train-the-Trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train a CNA candidate who is at least 16 years old through demonstrations and lectures.

(12) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

(13) "Utah Nursing Assistant Registry" means the state agency that approves nurse aide training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing, Medicare or Medicaid facility, certifies nurse aides who have completed a NATCEP, and renews certifications of qualified CNAs.

R432-45-3. Program Access Requirements.

(1) A nurse aide is required to complete a NATCEP and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a nurse aide on or before July 1, 1989, meets the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the Application for Certification Testing. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, the candidate must complete a NATCEP;

(b) an expired licensed nurse who can show proof of previous licensure in any state and who was in good standing with that state's professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, the candidate must complete a NATCEP.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination within one year of the certification expiration date. If the candidate does not pass either portion, the candidate must retrain;

(d) any out-of-state CNA who is certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in that other state.

(4) An out-of-state expired CNA must complete a NATCEP in the state of Utah.

R432-45-4. Competency Evaluation.

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nurse aides must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and a UNAR-approved representative must administer and evaluate the demonstration.

(b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved NATCEP;

(d) UNAR shall advise an individual who takes the competency evaluation that a record of the outcome of the evaluation will be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nurse aide's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. UNAR must develop this examination from a pool of test questions, only a portion of which to use in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(g) The competency evaluation must include a demonstration of the tasks the nurse aide is expected to perform as part of the nurse aide's function as a CNA;

(h) For the skills training component of the evaluation, UNAR shall establish a performance record for each NATCEP of major duties and skills that include:

(i) a list of the duties and skills that UNAR expects a CNA to learn in the program in accordance with this section;

(ii) a record that documents when the nurse aide performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the NATCEP, the NATCEP shall give the nurse aide a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation must have at least five performance tasks, all of which are included in the performance record. UNAR shall select five tasks for each nurse aide from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

R432-45-5. Nurse Aide Training Requirements Under UNAR.

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a NATCEP and all new instructors must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a NATCEP must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with this section, UNAR shall review and render a determination of approval or disapproval of any NATCEP when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private NATCEP.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a NATCEP that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is at least 16 years old on or before the first day the student begins class; and

(b) shall include an orientation to the training program.

(7) The nurse aide training program must meet certain content requirements to be UNAR-approved.

(a) NATCEP must consist of at least 100 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting resident independence;

(v) respecting resident rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 24 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies before training in any facility. The skills training must ensure that each nurse aide demonstrates competencies in the following areas:

(i) Basic nursing skills:

(A) taking and recording vital signs;

(B) measuring and recording height;

(C) caring for residents' environment; and

(D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:

(A) bathing that includes mouth care;

(B) grooming;

(C) dressing;

(D) using the toilet;

(E) assisting with eating and hydration;

(F) proper feeding techniques; and

(G) skin care.

(iii) Basic restorative services:

(A) use of assistive devices in ambulation, eating, and dressing;

(B) maintenance of range of motion;

(C) proper turning and positioning in bed and chair;

(D) bowel and bladder training;

(E) care and use of prosthetic and orthotic devices; and

(F) transfer techniques.

(iv) Mental Health and Social Service Skills:

(A) modifying one's behavior in response to the resident's behavior;

(B) identifying developmental tasks associated with the aging process;

(C) training the resident in self-care according to the resident's ability;

(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(F) using the resident's family as a source of emotional support.

(v) Resident's rights:

(a) providing privacy and maintaining confidentiality;

(b) promoting the resident's right to make personal choices to accommodate the resident's needs;

(c) giving assistance in solving grievances;

(d) providing needed assistance in getting to and participating in resident and family groups and other activities;

(e) maintaining care and security of resident's personal possessions;

(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and

(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.

(8) Qualification of Instructors:

(a) a NATCEP must have a program coordinator who is a registered nurse with a current and active Utah license to practice;

(b) who is in good standing with DOPL;

(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and

(d) must have at least three hours of documented consulting time per month with the respective program.

(9) Nursing facility-based programs:

(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements;

(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and

(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a NATCEP, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach a CNA candidate who is at least 16 years old. All high school instructors must be certified to teach in the classroom by completing a "Train the Trainer" program or be certified to teach as defined by the Utah State Office of Education before providing instruction in the classroom.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator and primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other qualified personnel.

_____ (14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

_____ (15) A NATCEP must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

_____ (16) A NATCEP must provide a classroom with the following:

- _____ (a) adequate space and furniture for the number of students;
- _____ (b) adequate lighting and ventilation;
- _____ (c) comfortable temperature;
- _____ (d) appropriate audio-visual equipment;
- _____ (e) skills lab equipment to simulate a resident's unit;
- _____ (f) clean and safe environment; and
- _____ (g) appropriate textbooks and reference materials.

_____ (17) Initial post-approval and ongoing reviews:

_____ (a) After the initial approval of a NATCEP, UNAR grants a one-year probationary period;

_____ (b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;

_____ (c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;

_____ (d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

_____ (e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

_____ (f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation, UNAR must make an on-site visit within one year of the self-evaluation.

_____ (18) The training and evaluation program review must include:

- _____ (a) skills training experience;
- _____ (b) maintenance of qualified faculty members for both classroom and skills portions of the nurse aide training program;
- _____ (c) maintenance of the security of the competency evaluation examinations;
- _____ (d) a record of complaints received about the program;
- _____ (e) a record that each nursing facility has provided certified nurse aides with at least 12 hours of staff development training each year with the compensation for the training;
- _____ (f) curriculum content that meets state and federal requirements; and
- _____ (g) classroom facilities and required equipment that meet state, federal, and UNAR requirements.

_____ (19) In addition to the nurse aide training that UNAR requires, each program shall provide a two-hour orientation of the clinical site for that student before beginning the clinical rotation. The orientation hours are not included in the required 24 hours of clinical training. This orientation phase must include an explanation of:

- _____ (a) facility organizational structure;
- _____ (b) facility policies and procedures;
- _____ (c) facility philosophy of care;

_____ (d) resident population; and

_____ (e) employee rules.

R432-45-6. Certified Nurse Aide Misconduct.

_____ CNA misconduct that adversely affects the health, safety or welfare of the public may result in loss of nurse aide certification.

_____ (1) CNA misconduct related to client safety and integrity includes:

_____ (a) leaving a nursing assistant assignment without properly notifying appropriate supervisory personnel;

_____ (b) failing to report information regarding incompetent, unethical or illegal practice of any health care provider to proper authorities;

_____ (c) failing to respect client rights and dignity regardless of social or economic status, personal attributes, or nature of health problems or disability; or

_____ (d) failing to report actual or suspected incidents of client abuse.

_____ (2) Engaging in sexual misconduct related to the client or to the workplace includes:

_____ (a) engaging in sexual relations if the patient is receiving care from an institution or entity that employs the CNA;

_____ (b) engaging in sexual relations with a client for a period when a generally recognized caregiver and patient relationship exists; or

_____ (c) engaging in sexual relations for an extended period when a patient has reasonable cause to believe a professional relationship exists between the patient or anyone certified under the provisions of this rule (Rule R432-45).

_____ (3) CNA misconduct related to administrative rules and state and federal law includes:

_____ (a) knowingly aiding, abetting or assisting an individual to violate or circumvent any rule or regulation intended to guide the conduct of health care providers;

_____ (b) violating the privacy rights and confidentiality of a client, unless disclosure of client information is required by law;

_____ (c) discriminating against a client on the basis of age, race, religion, sex, sexual preference, national origin, or disability;

_____ (d) abusing a client by intentionally causing physical harm or discomfort, or by striking a client, intimidating a client, threatening a client, or harassing a client;

_____ (e) neglecting a client by allowing a client to be injured or remain in physical pain and discomfort;

_____ (f) engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client by using derogatory names or gestures or profane language;

_____ (g) using the client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for services;

_____ (h) possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including oneself, except as directed by a health care professional authorized by law to prescribe drugs; or

_____ (i) removing or attempting to remove drugs, supplies, property, or money from the workplace without authorization.

_____ (4) CNA misconduct related to communication includes:

_____ (a) inaccurate recordkeeping in client or agency records;

(b) incomplete recordkeeping regarding client care that includes failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given;

(c) falsifying a client or agency record that includes filling in someone else's omissions, signing someone else's name, recording care not given, or fabricating data and values;

(d) altering a client or agency record that includes changing words, letters and numbers from the original document to mislead the reader of the record, and adding to the record after the original time and date without indicating a late entry;

(e) destroying a client or agency record;

(f) failing to maintain client records in a timely manner which accurately reflect management of client care, including failure to make a late entry within a reasonable time period; or

(g) failing to communicate information regarding the client's status to the supervising nurse or other appropriate person in a timely manner.

(5) CNA misconduct related to the client's family includes:

(a) failing to respect the rights of the client's family regardless of social or economic status, race, religion, or national origin;

(b) using the CNA-client relationship to exploit the family for the CNA's personal gain or for any other reason;

(c) stealing money, property, services, or supplies from the family; or

(d) soliciting or borrowing money, materials or property from the family.

(6) CNA misconduct related to co-workers that includes violent, abusive, threatening, harassing, or intimidating behavior towards a co-worker, which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

(7) CNA misconduct related to achieving and maintaining clinical competency includes:

(a) failing to competently perform the duties of a nursing assistant;

(b) performing acts beyond the authorized duties for which the individual is certified; or

(c) assuming duties and responsibilities of a nursing assistant without nursing assistant training or when competency has not been established or maintained.

(8) CNA misconduct related to impaired function includes:

(a) using drugs, alcohol or mind-altering substances to an extent or in a manner dangerous or injurious to the nursing assistant or others, or to an extent that such use impairs the ability to safely conduct the duties of a nursing assistant; or

(b) having a physical or mental condition that makes the nursing assistant unable to safely perform the duties of a nursing assistant.

(9) CNA misconduct related to certificate violations includes:

(a) providing, selling, applying for, or attempting to procure a certificate by willful fraud or misrepresentation;

(b) functioning as a medication assistant without current certification as a medication assistant;

(c) altering a certificate of completion of training or nursing assistant certification;

(d) disclosing contents of the competency examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration;

(e) allowing another person to use one's nursing assistant certificate for any purpose;

(f) using another's nursing assistant certificate for any purpose; or

(g) representing oneself as a CNA without current, valid CNA certification.

R432-45-7. Nurse Aide Registry.

(1) UNAR is the central registry for all certified nurse aides. This registry must identify all individuals who have successfully completed a NATCEP with a passing score of 75.

(2) A NATCEP must report to UNAR, within five days after the program ends, the names of all individuals who satisfactorily completed the program.

(3) UNAR processes all renewals for each nurse aide who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(4) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

(5) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

(6) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

R432-45-8. Limitations.

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a NATCEP at least every two years.

(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a nurse aide for more than 120 days only if the aide has completed a NATCEP.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-1

**Health, Family Health and
Preparedness, Primary Care and Rural
Health
R434-30**

**Primary Care Grants Program for
Medically Underserved Populations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38637

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is required by Subsection 26-10b-104(4). The statute gives the responsibility that in accordance with Title 63G, Chapter 3, Part 2, Utah Administrative Rulemaking Act, the department shall make rules governing the administration of the program, including rules that address: application procedures; eligibility criteria; selection criteria; award criteria; and administration of contracts. The change in Title 26, Chapter 10b, allows the department to provide financial assistance to new and continuation public entities and community-based organizations that provide primary health care to medically underserved populations. Applicants selected to receive an award under this chapter will provide primary health care within their specified project to Utah medically underserved populations.

SUMMARY OF THE RULE OR CHANGE: The rules govern the administration of the program, including: application procedures; eligibility criteria; selection criteria; administration of contracts; and disbursement and usage of awards. The change in Section 26-10b and rule allow the department to provide financial assistance to new and continuation public entities and community based organizations that provide primary health care to medically underserved populations. Applicants selected to receive an award will provide primary health care within their specified project to Utah medically underserved populations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-10b-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The rule will impose minor costs and duties to state government. These costs will be administrative costs to the program.
- ◆ **LOCAL GOVERNMENTS:** There are no expected costs to local governments, other than the time it would take for them to fill out and complete the competitive employment site application.
- ◆ **SMALL BUSINESSES:** There are no costs to small businesses. This is a grant program and the grant awards pay for the services provided.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs for affected persons. There are no costs associated with this because only small businesses or local government entities are eligible to participate in this program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Currently there are no compliance activities for affected persons, therefore there are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change will have minimal impact on businesses and may benefit some because of the possibility of multi-year funding.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
PRIMARY CARE AND RURAL HEALTH
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Erin Olsen by phone at 801-273-6618, by FAX at 801-273-4146, or by Internet E-mail at elolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.

R434-30. Primary Care Grant[s] Program[~~for Medically Underserved Populations~~].

R434-30-1. Authority and Purpose.

This rule is required by Section [26-18-304]26-10b-104. It implements the primary care grant[s] program[~~for medically underserved populations~~] under Title 26, Chapter [18]10b[, Part 3].

R434-30-2. Definitions.

[~~Terms used in this rule are defined in Section 26-18-301.~~]The definitions as they appear in 26-10b-101 apply. In addition:

(1) "Equipment" under this program is defined as equipment costing \$1,000 or more; has a life span of three years or more; is non-expendable material; is not consumed; and/or a group of items costing less than \$1,000 each, when combined make up one functional unit with a combined cost of \$1,000 or greater is considered one piece of equipment.

(2) "Office" means the Utah Department of Health, Division of Family Health and Preparedness, Bureau of Primary Care, Office of Primary Care and Rural Health.

R434-30-3. Grant Application Process and Content[Form].

(1) The department shall solicit grant applications by issuing a request for grant applications. Applicants responding to the request for grant applications under this program shall submit their grant application as directed in the grant application guidance issued by the Office[department].

(2) The content of grant applications is defined in Section 26-10b-103.

R434-30-4. Additional Criteria for Awarding Grants.

(1) In addition to the criteria listed in Section ~~[26-18-304]~~26-10b-104, the Office[department] shall consider the:

(a) ~~[the]~~reasonableness of the cost of the services to be given;

(b) degree to which primary health care services are provided comprehensively, extent to which supplemental services are provided, and extent to which services are conveniently located;

(c) demonstrated ability and willingness of applicant to systematically review the quality of care;

(d) commitment of applicant to sustain or enhance primary health care capacity for underserved, disadvantaged, and vulnerable populations; and

(e) degree to which the grant application is feasible, clearly described, and ready to be implemented.

R434-30-5. Disbursement and Usage.

(1) Awards to applicants can be made for one year, or up to two consecutive years, however, the total maximum allowable award amount is \$100,000.

(2) In State Fiscal Year 2015, which covers the period July 1, 2014 through June 30, 2015, applicants may request up to \$25,000 of the award amount to be used to purchase equipment and supplies that will enhance their ability to provide expanded primary health care. A single equipment purchase cannot exceed \$5,000.

R434-30-6. Eligibility.

(1) Recognized referral networks that provide primary health care are eligible to apply for grant funding under this Section, as funding permits, for up to a maximum of:

(a) \$50,000 for two years at up to \$25,000 per year; or

(b) \$25,000 for one year.

(2) Grant applications will be open to public entities and community based organizations.

(3) Each applicant is only allowed one grant application.

KEY: primary health care, medically underserved, grants

Date of Enactment or Last Substantive Amendment: ~~[July 16, 1996]~~**2014**

Notice of Continuation: **October 18, 2012**

Authorizing and Implemented or Interpreted Law: ~~[26-18-304]~~26-10b-104(4)

Natural Resources; Forestry, Fire and State Lands **R652-70-2300** Management of Bear Lake Sovereign Lands

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38658

FILED: 06/30/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides for the management and classification of the surface of sovereign lands in Utah. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1. Upon internal agency review, it was determined that a reference of Subsection R652-70-300(2)(c) was inadvertently left in the previous draft of the rule. The use of this reference could be interpreted to restrict the scope of the rule by defining adjacent upland landowner more narrowly than intended, thus prompting the amendment.

SUMMARY OF THE RULE OR CHANGE: The reason for the change is to remove the reference of Subsection R652-70-300(2)(c) from Subsection R652-70-2300(9)(a) because the use of this reference could be interpreted to restrict the scope of the rule by defining adjacent upland landowner more narrowly than intended.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-2-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The division will incur minimal costs for the processing of the permit application and issuance of the permit. However, any costs incurred will be covered by the \$25 permit fee.

◆ **LOCAL GOVERNMENTS:** The proposed amendment will not result in direct, measurable costs or benefits to local government as this amendment deals with launching and retrieving of a vessel in an area adjacent to a landowner's property.

◆ **SMALL BUSINESSES:** This amendment only affects adjacent landowners who desire to launch or retrieve a vessel from an area adjacent to the landowner's property. If the landowner is a small business and they desire to launch or

retrieve a vessel from an area adjacent to their property, then a permit would be required at the cost of \$25 along with being required to obtain a decontamination certificate.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The removal of the reference to Subsection R652-70-300(2) (c) will broaden the scope of the rule with regard to adjacent upland landowners. Adjacent upland landowners will still have to purchase beach launching permits and comply with the Mussel Aware Boater Program and obtain a decontamination certificate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Not to exceed \$25 for each boat launching permit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should have little impact on business.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Brian Cottam, Director

R652. Natural Resources; Forestry, Fire and State Lands.

R652-70. Sovereign Lands.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

(5) The established speed limit is 15 miles per hour.

(6) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(7) No campfires or fireworks are allowed.

(8) The use and operation of motor vehicles on sovereign land at Bear Lake shall be governed by Utah Code 65A-3-1 and the Bear Lake CMP.

(9) Pursuant to 65A-2-6(2), to obtain a permit to launch or retrieve a vessel in an area adjacent to the landowner's property at Bear Lake, the adjacent landowner shall:

(a) provide proof of being an adjacent landowner as defined in 65A-2-6(1) [~~and above in R652-70-300(2)(e).~~]

(b) complete the online Mussel-Aware Boater Program and receive a Decontamination Certification Form valid through the end of the calendar year as required and provided by the Utah Division of Wildlife Resources as part of the Aquatic Invasive Species Program.

(10) Each adjacent landowner surrounding Bear Lake may only be issued two(2) beach launching permits annually. They will not be replaced if lost or stolen.

(a) The permit is valid for the calendar year within which the permit is issued.

(b) the permit is for the sole purpose of launching or retrieving a water vessel.

(c) the permit does not authorize parking or operating a motor vehicle in an area designated as closed in the Bear Lake Comprehensive Management Plan in violation of 65A-3-1(3).

(11) the division may enter into an agreement with a local governmental entity or state agency to issue the beach launching permits to adjacent landowners in compliance with the requirements listed above.

(a) the agreement will allow the entity or agency to establish a minimal fee not to exceed \$25 for issuing the beach launching permit.

(12) The division or the entity or agency with an agreement to issue the beach launching permit may revoke or deny an adjacent landowner a permit to launch under the following circumstances:

(a) the adjacent landowner fails to comply with the beach launching permit requirements and stipulations listed above (R652-70-2300(9)(a-b) and R652-70-2300(10)(a-c))

(b) the adjacent landowner fails to acquire a lease or permit for structures placed on sovereign lands that may include but not limited to buoys, piers, docks (with the associated anchors/weights) or boat ramps as required in R652-70-300.

(13) Persons found in violation of 65A-3-1(1) and 65A-3-1(2) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

KEY: sovereign lands, permits, administrative procedures

Date of Enactment or Last Substantive Amendment: ~~July 8, 2013~~ 2014

Notice of Continuation: April 2, 2012

Authorizing, and Implemented or Interpreted Law: 65A-10-1

**Public Service Commission,
Administration
R746-200-7
Termination of Service**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38644

FILED: 06/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change streamlines and clarifies the process whereby an individual who has provided a serious illness or infirmity statement to a public utility may receive a short-term continuation or restoration of utility service. The current rule requires Commission approval in some circumstances that do not allow for procedures in compliance with the Utah Administrative Procedures Act. Under the proposed change, utility customers have the same rights and have the opportunity under existing and unchanged procedures to file an informal or formal complaint against a public utility that does not honor those rights.

SUMMARY OF THE RULE OR CHANGE: The current rule allows a customer who has provided a serious illness or infirmity statement to a public utility to receive up to two continuations or restorations of utility service, each up to one month. The first month is granted by the public utility and the second month is granted by the Public Service Commission. The current rule does not provide any guidance about how often a customer may receive a continuation or restoration. Under the proposal, customer rights are maintained but in a different procedure. A public utility will be required to provide up to two continuations or restorations per calendar year, up to one month each, to a customer who has provided a serious illness or infirmity statement. This proposed change clarifies the rights of customers and the responsibilities of public utilities, and maintains oversight by both the Division of Public Utilities and the Public Service Commission through the existing and unchanged informal and formal complaint process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-4-1 and Section 54-4-7 and Section 54-7-25 and Section 54-7-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Amending this rule will not modify administrative costs for Public Service Commission and Division of Public Utility reviews of customers with a serious illness or infirmity statement. Those reviews will now take place in the informal and formal complaint process instead of while processing requests for extensions directly from customers.

◆ **LOCAL GOVERNMENTS:** Amending this rule will not have any costs or savings related to local governments. This rule is not applicable to public utilities provided by a municipality.

◆ **SMALL BUSINESSES:** To the extent a small business public utility ever is impacted by this rule, the proposed amendment does not have any costs or savings because it simply clarifies existing requirements and streamlines compliance procedures.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment clarifies existing public utility customer rights and streamlines the process for honoring those rights, and should not involve any costs or savings to any persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will not result in additional compliance costs for affected persons, either public utilities or customers. Substantive customer rights are maintained with a clearer and more streamlined process to honor those rights.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment clarifies existing public utility customer rights while streamlining processes, and will not have any fiscal impact.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jordan White by phone at 801-530-6712, or by Internet E-mail at jordanwhite@utah.gov
◆ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Jordan White, Legal Counsel

**R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-7. Termination of Service.**

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

a. who holds a current and active medical license under Utah Code Title 58; and

b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule,

2. "Life-supporting equipment" means life-supporting medical equipment:

a. with normal operation that requires continuation of public utility service; and

b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and

b. including:

i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;

ii. the account holder's name and address;

iii. name of resident using life-supporting equipment and relationship to account holder, if different than account holder;

iv. the health infirmity and expected duration;

v. identification of the life-support equipment that requires the utility's service;

vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and

vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment,

4. "Serious illness or infirmity statement" means a written statement:

a. signed by a licensed medical provider;

b. written on:

i. a form obtained from the public utility; or

ii. the licensed medical provider's letterhead stationary;

c. legibly describing:

i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and

ii. the anticipated duration of the diagnosed medical condition.

B. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service -- Medical Reasons --

1. Serious Illness or Infirmity. If a public utility receives a serious illness or infirmity statement[-]:

a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;

b. ~~[the Commission may, upon receipt of a written petition from the account holder of the residence, or the person whose health would be threatened or illness aggravated by termination of utility service, grant an extension that normally will not exceed one additional month]the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and~~

c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

a. After receiving a life-supporting equipment statement, the public utility:

i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;

ii. may not terminate service to the residence unless the public utility has obtained prior approval from the Commission; and

iii. may request annual verification from the licensed medical provider of the life-supporting equipment.

b. A public utility may petition the Commission for authorization to terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification:

i. if the account is in default;

ii. if the utility has:

AA. followed R746-200-5 on offering a deferred payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months; and

iii. by filing its petition with the Commission and providing a copy to the Division.

c. A petition for authorization to terminate service shall contain:

i. the public utility's written request to the Commission to terminate service;

ii. the life-supporting equipment statement;

iii. the information provided to the public utility by the licensed medical provider;

iv. a copy of a letter sent to the account holder and, if appropriate, to a third party, notifying the account holder of the account holder's right to file a protest with the Commission within 10 days; and

v. an affidavit verifying the public utility provided the account holder and, if appropriate, a third party, the information required by this rule.

d. Within two business days after receiving a petition for authorization to terminate service, the Division shall:

i. notify the account holder by regular and certified mail that the utility is requesting authorization from the Commission to terminate service; and

ii. instruct the account holder to contact the utility for further information.

e. After receiving a petition for authorization to terminate service, the Commission may:

i. schedule an expedited hearing if a protest is received within 10 days; or

ii. issue an order authorizing termination of service if the requirements of this rule have been satisfied.

f. If a public utility receives authorization to terminate service, the public utility shall provide a 48 hour notice of termination to the customer consistent with R746-200-7.G.2.

g. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program -- Suppliers may not discontinue utility service to a

low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification

procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to

residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

KEY: public utilities, rules, utility service shutoff

Date of Enactment or Last Substantive Amendment: [~~November 4, 2013~~2014]

Notice of Continuation: November 28, 2012

Authorizing, and Implemented or Interpreted Law: 54-4-1; 54-4-7; 54-7-9; 54-7-25

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38664
FILED: 07/01/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to set rules for Family Friends and Neighbors (FFN) child care.

SUMMARY OF THE RULE OR CHANGE: The Department is moving to a category of child care provider known as FFN which will have requirements similar to licensed providers. These proposed amendments also clean up some language about when parents can provide care for their own child, that the Division of Child Care Licensing will provide the initial review for FFN providers, and that exceptions to the type of approved child care providers will no longer be allowed. The Department introduced this new type of provider earlier this year and these changes will complete the transition by 10/01/2014.

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

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. There will be some compliance costs to FFN providers most of which they have already been paying or are required to pay under legislation.
- ◆ **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: Compliance costs for this change will be paid by the child care provider and not the Department's clients. These are the only persons affected by this change. These potential costs will be no greater than current child care center providers pay and will help ensure only safe, appropriate child care is subsidized by the tax payers.

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 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

**R986. Workforce Services, Employment Development.
 R986-700. Child Care Assistance.
 R986-700-702. General Provisions.**

- (1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

- (a) parents;
- (b) specified relatives; or
- (c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

- (a) children under the age of 13; and
- (b) children up to the age of 18 years if the child;
 - (i) meets the requirements of rule R986-700-717, and/or
 - (ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided ~~for~~ by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where~~unless~~ the client is working for an approved child care center~~[—This includes clients who regularly watches children other than her own, and does not~~ have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member[s] of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and

returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

- (1) A client has the right to select the type of child care which best meets the family's needs.
- (2) If a client requests help in selecting a provider, the Department will refer the client to the local ~~[Child Care Resource and Referral]~~ Care About Child Care agency.
- (3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.
- (4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.
- (5) The only changes a client must report to the Department within ten days of the change occurring are:
 - (a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);
 - (b) that the client is no longer in an approved training or educational program;
 - (c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;
 - (d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;
 - (e) the client is separated from his or her employment;
 - (f) a change of address;
 - (g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or
 - (h) a change in the child care provider, including when care is provided at no cost.
- (6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.
- (7) A client is responsible for payment to the Department of any overpayment made in CC.
- ~~(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform~~

~~the provider that further information is needed before payment can be determined.~~

~~]~~ ~~(9)~~ The Department ~~[may also]~~ is authorized to release the following information to the designated provider:

- (a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;
- (b) information contained on the Form 980;
- (c) the date the child care subsidy was issued;
- (d) the subsidy amount for that provider;
- (e) the subsidy deduction amount;
- (f) the date a two party check was mailed to the client;
- (g) a copy of the two party check on a need to know basis;~~[-and]~~
- (h) the month the client is scheduled for review or reestablishment~~[-]~~.
- (i) the date the client's application was received; and
- (j) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

~~(10)~~ Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) ~~[licensed and accredited providers;]~~ providers regulated through Department of Health Child Care Licensing (CCL):
 - (i) licensed homes;
 - (ii) ~~licensed family group homes; and~~
 - ~~(iii) licensed child care centers; and[-]~~
 - ~~(iii) homes with a residential certificate.~~
- (b) license exempt providers who are not required by law to be licensed and are either:
 - (i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL and have ~~[Beginning March 1, 2014]~~ at least one person who is trained in first aid and infant/child CPR who must be with the children at all times including when the children are being transported in a vehicle. Current verification of first aid and CPR training must be provided to CCL prior to Department approval ~~[Centers approved to receive CC subsidies as of March 1, 2014 will be allowed 30 days from the date of notification from the Department of Health, Child Care Licensing (CCL) to submit a complete application together with certification of completion of these requirements];~~ or
 - (ii) ~~[related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated. Beginning October 1, 2014 this category of child care~~

~~provider will be replaced with]DWS Family, Friend and Neighbor [approved—]providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection ([7]3) of this section and in Department policy.~~

~~[(e) homes with a Residential Certificate obtained from CCL.~~

~~(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:~~

~~(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child-care availability in the community where the parent resides;~~

~~(b) because a child in the home has special needs which cannot be otherwise accommodated; or~~

~~(c) which will accommodate the hours when the client needs child care.~~

~~(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.~~

~~(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.~~

~~(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.~~

~~(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:~~

~~(a) the provider be at least 18 years of age and be legally able to work in the United States;~~

~~(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;~~

~~(c) there are working smoke detectors where children are provided care;~~

~~(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;~~

~~(e) there is a telephone in operating condition with a list of emergency numbers;~~

~~(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;~~

~~(g) the child in care will be immunized as required for children in licensed day care and;~~

~~(h) good hand washing practices will be maintained to discourage infection and contamination.~~

~~[(6)2] The following providers are not eligible for receipt of a CC payment:~~

~~(a) [a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;] a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;~~

~~(b) a sibling of the child living in the home can never be approved, even for a special needs child;~~

~~(c) [household members whose income must be counted in determining eligibility for CC;~~

~~(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;~~

~~([e]d) [illegal]undocumented aliens;~~

~~([f]e) persons under age 18;~~

~~([g]f) a provider providing care for the child in another state;~~

~~([h]g) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run and the provider is otherwise eligible including meeting the requirements of background checks under R986-700-753;~~

~~([i]h) any provider disqualified under R986-700-718;~~

~~([j]i) a provider who does not cooperate with a Department investigation of a potential overpayment;[~~

~~(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met;]; or~~

~~([l]j) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.~~

~~([7]3) FFN providers[, as provided in subsection (1)(b);] will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:~~

~~(a) complete, sign and submit an application to [the—] CCL;~~

~~(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;~~

~~[(c) provide a copy of a fire clearance from the State Fire Marshal or designated local fire authority.~~

~~](d)e) pass a home inspection as provided in Department policy[;];~~

~~([e]d) complete an infant/child CPR training[;];~~

~~([f]e) complete first aid training; and,~~

~~([g]f) [pass a background check as required in R986-700-751 et seq.]the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.~~

~~([8]4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.[CC providers that have been approved as a license exempt provider, or apply to be an FFN approved provider will be given a grace period to complete the requirements in subsection (7) of this section as follows:~~

~~(a) the provider or applicant will be allowed up to 60 days from notification from CCL and no later than September 30, 2014 to submit a complete application to CCL together with a certification of completion of infant/child CPR training and first aid training;~~

~~(b) all requirements in subsection (7) of this section must be completed by August 31, 2014 to prevent a delay in future benefits and no later than September 30, 2014;~~

~~(c) the provider will be denied if the requirements are not met within the due dates given. After the grace period expires, all providers will be required to obtain an FFN approval and meet all~~

requirements before being approved to care for children receiving a Department subsidy payment;

~~(d) an approved FFN approved provider is authorized to provide care for a limited number of children or families as defined in Department policy.]~~

~~(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC provider must complete and submit a renewal application, together with any information, verifications or releases required or requested by the Department or CCL, 30 calendar days before the expiration date of the current approval.~~

~~(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.~~

~~(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-1-123 et seq.~~

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

~~(2) [If the overpayment was because the client committed an IPV as defined in R986-100-117, including forging a provider's name on a two party CC check, or committing an IPV as a provider, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:]If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider:~~

- ~~(a) for a period of one year for the first IPV;~~
- ~~(b) for a period of two years for the second IPV; and~~
- ~~(c) for life for the third IPV.~~

~~(3) If the client was at fault in the creation of an overpayment for any reason other than an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.~~

~~(4) All CC overpayments must be repaid to the Department.~~

~~Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.~~

~~(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.~~

~~(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the~~

discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of ~~[six]~~seven hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

~~[(6) CC with an provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 12 midnight and 6 a.m. except;~~

- ~~(a) for a child under the age of 24 months old;~~
- ~~(b) to accommodate a special needs child; or~~
- ~~(c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.~~

R986-700-753. Criminal Background Screening.

~~(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.~~

~~([+])2 Each client requesting approval of a covered child care provider must submit to [the Department]CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process.[before the client's application for child care assistance can be approved.] Additional household members must give permission to run the background check.. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an~~

exception is granted under subsection (~~[3]4~~) of this section. [~~Normally, child care subsidy will not be delayed pending completion of the background check. Beginning October 1, 2014 no child care subsidy will be paid until the background check has been completed where required by law.~~]

(~~[2]3~~) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, [~~the Department~~CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to [~~the Department~~CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department [~~prior to the background check~~]. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(~~[3]4~~) Fingerprint cards are not required if the Department or CCL is reasonably satisfied that the covered individual has resided in Utah for the last five years or is a refugee who settled directly to Utah. A fingerprint card may be required, even if the individual has resided in Utah for the last five years or is a refugee who settled directly to Utah, if requested by the Department or CCL.

[~~————(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.~~]

(5) If [~~the Department~~CCL takes an action adverse to any covered individual based upon the background screening, [~~the Department will send a written decision to the client explaining the action and the right of appeal. DOH~~CCL will send a denial letter to the provider and the covered individual.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

(~~[1]—~~)If [~~the Department~~CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

[~~————(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.~~]

[~~————(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.~~]

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a) (v) [~~the Department or DOH~~CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify [~~DOH~~CCL. Failure to notify [~~DOH~~CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

KEY: child care
Date of Enactment or Last Substantive Amendment: [~~April 15,~~]2014
Notice of Continuation: September 8, 2010
Authorizing, and Implemented or Interpreted Law: 35A-3-310

**Workforce Services, Employment
 Development
 R986-900-902
 Options and Waivers**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38663
 FILED: 07/01/2014**

RULE ANALYSIS
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change who will be exempt from the Employment and Training program.

SUMMARY OF THE RULE OR CHANGE: Individuals who do not have a GED or high school diploma will no longer be exempt from the Employment and Training program. The agency has also provided that individuals no longer need to apply for food stamps at their local office.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-103 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(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 08/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-900. Food Stamps.

R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply [~~at the local office which serves the area in which they reside~~].

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system (EBT).

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(i) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(j) A client may waive his or her right to an administrative disqualification hearing.

(k) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(l) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(m) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(n) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPT, must

participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

(o) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(p) The Department allows the following exemptions from the Employment and Training (E and T) program for individuals who:

(i) are Refugee Cash Assistance (RCA) participants;

(ii) are on a temporary layoff from their place of employment;

(iii) are unemployed for less than 6 months;

(iv) live more than 35 miles from an employment center;

(v) lack child care, either because it is not available or the customer is not eligible for child care assistance;

(vi) are not appropriate for E and T as determined by a manager or designee;

(vii) are age 47 through the month of their 60th birthday;

(viii) are low functioning/have developmental disabilities/are socially dysfunctional and who have obvious functional limitations that are a substantial handicap to employment;

(ix) have current domestic violence issues;

(x) have limited language skills or individuals whose primary language is other than English;

(xi) lack public and/or private transportation;

(xii) are in the application or appeals process for SSI;

(xiii) have earned income, regardless of the amount earned;

(xiv) have no fixed address;

(xv) ~~do not have a GED or high school diploma;~~

~~(xvi)] are pregnant regardless of trimester;~~

(xvi[i]) are on probation or parole who are required to complete court ordered activities such as work release and drug court; or

(xvii) are participating in a program with a Department partner such as case management by Vocational Rehabilitation, or are participating in a Title V or Choose to Work program.

(q) Beginning July 1, 2012, individuals who meet the requirements of an exemption will no longer be allowed to receive services on a voluntary basis or receive a work reimbursement.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over \$25 or a change in the source of unearned income.

(b) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(c) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(d) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(e) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(f) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(g) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(h) The Department will hold disqualification hearings by telephone.

(i) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(j) The federal regulation that requires all interviews be scheduled for a specific date and time is waved for initial telephone interviews. This allows clients to call anytime Monday through Friday from 8 a.m. to 5 p.m. to complete the required initial interview. Households selected for the "Assessment of the Contributions of an Interview to the Supplemental Nutrition Assistance Program (SNAP) Eligibility and Benefits Determinations" study, also known as the No Interview Pilot, will

be exempt from the interview requirement. Customer contact may be needed to complete the application and/or recertification process. This waiver will be in place September 1, 2012 - November 30, 2013.

(k) To meet the student work exemption, a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

KEY: food stamps, public assistance

Date of Enactment or Last Substantive Amendment: [~~January 8, 2013~~2014]

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-103

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, Finance **R25-10** State Entities' Posting of Financial Information to the Utah Public Notice Website

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38653
FILED: 06/25/2014

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: Section 63A-3-404 authorizes the Division of Finance to make rules governing the positing of financial information for participating state entities on the Utah Public Financial Website (UPFW) after consultation with the Utah Transparency Advisory Board.

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 during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it is required by statute. It sets the rules for state participating entities' required posting of public financial information to the UPFW.

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:
♦ Brenda Lee by phone at 801-538-3102, by FAX at 801-538-3244, or by Internet E-mail at brendalee@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 06/25/2014

Agriculture and Food, Regulatory Services **R70-310** Grade A Pasteurized Milk

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38651
FILED: 06/24/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is promulgated under Subsection 4-2-2(1)(j) enabling the Utah Department of

Agriculture and Food to conduct investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture, specifically to the regulations and guidelines presented in the PHS/FDA 2013 Pasteurized Milk Ordinance. In order to stay within the parameters of the 2013 Pasteurized Milk Ordinance (PMO), the Utah Department of Agriculture and Food must have authority to practice the provisions listed in Subsection 4-2-2(1)(j).

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 supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food must be able to continue monitoring, and when necessary, directing the production and distribution of Grade A pasteurized milk in the State of Utah as long as the dairy industry maintains a presence in the state. Therefore, this rule should be continued. There have been no comments in opposition to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 REGULATORY SERVICES
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 06/24/2014

Health, Health Care Financing,
 Coverage and Reimbursement Policy
R414-14A
 Hospice Care

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 38630
 FILED: 06/17/2014

**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: Pub L. No. 111-148 of the Affordable Care Act authorizes coverage for hospice care services as described in 42 USC 1395x(dd). In addition, Section 26-1-5 grants the Department the authority to adopt, amend or rescind rules as necessary to implement the Medicaid program, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it establishes coverage for Medicaid recipients who receive hospice care services, and allows clients under 21 years old to receive concurrent care for their terminal illness.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/17/2014

Health, Health Care Financing,
 Coverage and Reimbursement Policy
R414-31
 Inpatient Psychiatric Services for
 Individuals Under Age 21

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38650
FILED: 06/24/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 USC Section 1396(d)(h) authorizes the provision of inpatient psychiatric services for individuals who are under 21 years of age and reside in a psychiatric hospital. In addition, Section 26-1-5 grants the Department the authority to adopt, amend or rescind rules as necessary to implement the Medicaid program, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it allows individuals who are under 21 years of age and reside in the Utah State Hospital to receive psychiatric care.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/24/2014

**Health, Health Care Financing,
Coverage and Reimbursement Policy****R414-49****Dental, Oral and Maxillofacial Surgeons
and Orthodontia****FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 38631
FILED: 06/17/2014

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: Section 26-1-5 grants the Department the authority to adopt, amend or rescind rules as necessary to implement the Medicaid program. In addition, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements dental, oral, maxillofacial surgeon, and orthodontia services for Medicaid recipients as described in the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and in the Medicaid State Plan.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/17/2014

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-501**

**Preadmission Authorization,
Retroactive Authorization, and
Continued Stay Review**

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

DAR FILE NO.: 38632

FILED: 06/17/2014

**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: 42 USC Sec. 1396r(b)(3)(e)(5)(f) (6)(B) and 42 CFR 456.350 through 456.380 specify resident assessment and utilization control requirements for nursing care facilities. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements nursing facility and utilization requirements to evaluate each resident's need for admission and continued stay in a nursing facility.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/17/2014

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-502**

Nursing Facility Levels of Care

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

DAR FILE NO.: 38633

FILED: 06/17/2014

**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: Section 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program. In addition, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it defines the levels of care that nursing facilities may provide for Medicaid recipients.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/17/2014

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-503

Preadmission Screening and Resident Review

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38660

FILED: 07/01/2014

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: 42 USC 1396r(b)(3) and (e)(7), and Pub. L. No. 104-315 require preadmission screening and resident review (PASRR) of nursing facility residents with serious mental illness or intellectual disability. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements PASRR requirements to evaluate nursing facility residents who need to be treated for serious mental illness or intellectual disability.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 07/01/2014

Insurance, Administration

R590-192

Unfair Accident and Health Claims Settlement Practices

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38635

FILED: 06/17/2014

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: Subsections 31A-2-201(1) and 31A-2-201(3)(a) empower the commissioner to administer and enforce Title 31A and to make rules to implement the provisions of Title 31A. Further authority to provide for timely settlement of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are authorized pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely, accurate, and complete response to the commissioner is provided by Subsections 31A-2-202(4) and (6).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments received did not have to do with supporting or opposing the rule, but to a better understanding of how to interpret the proposed changes and their impact on them. Comments were received when the rule was changed on two different occasions. During the June 2011 comment period for DAR No. 34769, the department received written comments from three sources. One expressed concern regarding adverse benefit determination notices and continued coverage pending the

outcome of an appeal. The department accepted their suggested re-wording in a later revision of the rule. A second letter expressed the misunderstanding that grandfathered benefit plans were not regulated under PPACA, which they are. They also suggested wording to clarify that non-grandfathered plans provide one level of internal appeal before final determination is made. A third letter asked for clarification between grandfathered and non-grandfathered plans and suggesting areas in the rule that needed clarification. In August of 2011, additional changes were made to the rule under DAR No. 35103, that made clarifications requested in June of that same year. At that time, a licensee requested the enforcement date be no earlier than 01/01/2012. However, this would have been a substantive change to the rule requiring another filing and comment period that would have extended the comment period beyond the 01/01/2012 date required by the federal law to put the change into effect.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is a major consumer protection regulation. It sets parameters and time lines for payment of health insurance claims. Therefore, this rule should be continued. In regards to comments made that the department disagreed with, and as noted above, a licensee requested the enforcement date be no earlier than 01/01/2012. However, this would have been a substantive change to the rule requiring another filing and comment period that would have extended the comment period beyond the 01/01/2012 date required by the federal law to put the change into effect.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 06/17/2014

Workforce Services, Unemployment
Insurance
R994-309
Nonprofit Organizations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38665
FILED: 07/01/2014

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: This provision provides information to a nonprofit organization about when it can become a reimbursable employer, how benefits are paid as a reimbursable employer and which nonprofits can become reimbursable employers as provided in Section 35A-4-309.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no written comments during the last five years or since the last five-year review.

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 is necessary to help all nonprofit organizations know which organizations can become reimbursable and how a reimbursable nonprofit will pay for benefit costs. It is essential to help a nonprofit understand its responsibilities and benefits under unemployment. It also explains how a reimbursable employer can change to a contributory and the impact of such a change including liability as an employer. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
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

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 07/01/2014

Workforce Services, Unemployment
Insurance
R994-310
Coverage

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

DAR FILE NO.: 38666
FILED: 07/01/2014

**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: Section 35A-4-310 provides which employing units are subject to the act. The rule explains when an employer must activate an account and when it will become inactive.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during the last five years or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule explains to those units when they need to activate an employer account with the Department and when they can make the account inactive. It is essential to provide necessary information to employers to help them comply with the act. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
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

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 07/01/2014

Workforce Services, Unemployment
Insurance
R994-311
Governmental Units and Indian Tribes

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

DAR FILE NO.: 38667
FILED: 07/01/2014

**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 provides valuable information regarding which entities can be governmental units under Section 35A-4-311 and the responsibilities and liabilities of those units. This rule pertains to billing, liability, and definitions of which organizations can be governmental unit or Indian tribe.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during the last five years or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule explains how to elect to be a reimbursable and how to change that election and the consequences for changing. It also explains how the Department will bill for benefits and how they should be paid. Finally, the rule provides that charter schools can be covered under the rule as a reimbursable employer. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
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

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 07/01/2014

**Workforce Services, Unemployment
Insurance
R994-312
Employing Units Records**

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

DAR FILE NO.: 38668
FILED: 07/01/2014

**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: This rule describes the record-keeping requirements of the department, as well as the department's confidentiality rules pursuant to Section 35A-4-312 which sets forth the requirement that employers keep records and that those records be available to the department. The statutory provision also provides when those records can be disclosed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received

any written comments during the last five years or since the last five-year review.

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 is essential to tell employers what records must be kept and that the Department is authorized to inspect those records. It also provides when and under what circumstances any records will be available and to whom. Most employer records are private but can be used for limited purposes when necessary for the administration of the program. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
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

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 07/01/2014

End of the Five-Year Notices of Review and Statements of Continuation Section

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Division of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

Agriculture and Food, Regulatory
Services

R70-310

Grade A Pasteurized Milk

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 38636

FILED: 06/18/2014

EXTENSION REASON AND NEW DEADLINE: The agency is requesting an extension due to the misunderstanding of exactly what documentation was required for the review, and apparently submitting the wrong information. New deadline: 10/22/2014. (**DAR NOTE:** The five-year review was filed on 06/24/2014 and is under DAR No. 38651 in this issue, July 15, 2014, of the Bulletin.)

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov

AUTHORIZED BY: Travis Waller, Director

EFFECTIVE: 06/18/2014

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Finance

No. 38471 (AMD): R25-7. Travel-Related Reimbursements for State Employees

Published: 05/15/2014

Effective: 06/23/2014

Commerce

Occupational and Professional Licensing

No. 38473 (AMD): R156-24b. Physical Therapy Practice Act Rule

Published: 05/15/2014

Effective: 06/23/2014

No. 38475 (R&R): R156-31b. Nurse Practice Act Rule

Published: 05/15/2014

Effective: 06/23/2014

No. 38450 (AMD): R156-63a. Security Personnel Licensing Act Contract Security Rule

Published: 05/15/2014

Effective: 06/23/2014

No. 38474 (AMD): R156-63b. Security Personnel Licensing Act Armored Car Rule

Published: 05/15/2014

Effective: 06/23/2014

Environmental Quality

Water Quality

No. 38402 (AMD): R317-1-7. TMDLs

Published: 04/15/2014

Effective: 08/01/2014

No. 38288 (AMD): R317-2-14. Numeric Criteria

Published: 03/01/2014

Effective: 07/02/2014

No. 38288 (CPR): R317-2-14. Numeric Criteria

Published: 06/01/2014

Effective: 07/02/2014

Health

Family Health and Preparedness, Children with Special Health Care Needs

No. 38319 (AMD): R398-1. Newborn Screening

Published: 03/15/2014

Effective: 07/01/2014

Health Care Financing, Coverage and Reimbursement Policy

No. 38465 (AMD): R414-303. Coverage Groups

Published: 05/15/2014

Effective: 07/01/2014

No. 38466 (AMD): R414-306. Program Benefits and Date of Eligibility

Published: 05/15/2014

Effective: 07/01/2014

No. 38478 (AMD): R414-401-3. Assessment

Published: 05/15/2014

Effective: 07/01/2014

Human Resource Management

Administration

No. 38456 (AMD): R477-1. Definitions

Published: 05/15/2014

Effective: 07/01/2014

No. 38457 (AMD): R477-2-3. Fair Employment Practice and Discrimination

Published: 05/15/2014

Effective: 07/01/2014

NOTICES OF RULE EFFECTIVE DATES

No. 38454 (AMD): R477-3-4. Position Classification Review
Published: 05/15/2014
Effective: 07/01/2014

No. 38458 (AMD): R477-4. Filling Positions
Published: 05/15/2014
Effective: 07/01/2014

No. 38469 (AMD): R477-6. Compensation
Published: 05/15/2014
Effective: 07/01/2014

No. 38455 (AMD): R477-7. Leave
Published: 05/15/2014
Effective: 07/01/2014

No. 38459 (AMD): R477-8. Working Conditions
Published: 05/15/2014
Effective: 07/01/2014

No. 38460 (AMD): R477-9. Employee Conduct
Published: 05/15/2014
Effective: 07/01/2014

No. 38461 (AMD): R477-10-1. Performance Evaluation
Published: 05/15/2014
Effective: 07/01/2014

No. 38462 (AMD): R477-14. Substance Abuse and Drug-Free Workplace
Published: 05/15/2014
Effective: 07/01/2014

No. 38463 (AMD): R477-15. Workplace Harassment Prevention
Published: 05/15/2014
Effective: 07/01/2014

No. 38464 (AMD): R477-101. Administrative Law Judge Conduct Committee
Published: 05/15/2014
Effective: 07/01/2014

Human Services

Substance Abuse and Mental Health

No. 38451 (AMD): R523-22. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders
Published: 05/15/2014
Effective: 06/26/2014

Natural Resources

Wildlife Resources

No. 38477 (AMD): R657-60. Aquatic Invasive Species Interdiction
Published: 05/15/2014
Effective: 06/24/2014

Workforce Services

Employment Development

No. 38472 (AMD): R986-200-207. Participation in Child Support Enforcement
Published: 05/15/2014
Effective: 07/01/2014

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 July 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>Administration</u>					
R13-2	Access to Records	38570	5YR	06/02/2014	2014-12/53
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	38547	5YR	05/21/2014	2014-12/53
<u>Debt Collection</u>					
R21-2	Office of State Debt Collection Administrative Procedures	38497	NSC	05/29/2014	Not Printed
R21-3	Debt Collection Through Administrative Offset	38496	NSC	05/29/2014	Not Printed
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38587	5YR	06/10/2014	2014-13/133
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38425	R&R	06/09/2014	2014-9/4
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
R25-7	Travel-Related Reimbursements for State Employees	38471	AMD	06/23/2014	2014-10/4
R25-10	State Entities' Posting of Financial Information to the Utah Public Notice Website	38653	5YR	06/25/2014	Not Printed
<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	2014-10/111
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	2014-10/111
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	2014-10/112

<u>Records Committee</u>						
R35-1	State Records Committee Appeal Hearing Procedures	38572	5YR	06/03/2014	2014-13/133	
R35-1a	State Records Committee Definitions	38573	5YR	06/03/2014	2014-13/134	
R35-2	Declining Appeal Hearings	38574	5YR	06/03/2014	2014-13/135	
R35-3	Prehearing Conferences	38575	5YR	06/03/2014	2014-13/135	
R35-4	Compliance with State Records Committee Decisions and Orders	38576	5YR	06/03/2014	2014-13/136	
R35-5	Subpoenas Issued by the Records Committee	38577	5YR	06/03/2014	2014-13/136	
R35-6	Expedited Hearing	38578	5YR	06/03/2014	2014-13/137	
<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>Conservation Commission</u>						
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	NEW	05/08/2014	2013-22/15	
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	CPR	05/08/2014	2014-7/82	
<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>						
R70-310	Grade A Pasteurized Milk	38467	NSC	05/16/2014	Not Printed	
R70-310	Grade A Pasteurized Milk	38636	EXT	06/18/2014	Not Printed	
R70-310	Grade A Pasteurized Milk	38651	5YR	06/24/2014	Not Printed	
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	38315	AMD	05/08/2014	2014-6/5	
R70-530	Food Protection	38262	R&R	03/27/2014	2014-4/5	
ALCOHOLIC BEVERAGE CONTROL						
<u>Administration</u>						
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	
ATTORNEY GENERAL						
<u>Administration</u>						
R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed	
CAPITOL PRESERVATION BOARD (STATE)						
<u>Administration</u>						
R131-4	Capitol Preservation Board General Procurement Rule	38546	EMR	05/21/2014	2014-12/49	
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	38476	5YR	05/01/2014	2014-10/113	

RULES INDEX

COMMERCE

Consumer Protection

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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Occupational and Professional Licensing

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
R156-15	Health Facility Administrator Act Rule	38337	AMD	05/08/2014	2014-7/5
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
R156-24b	Physical Therapy Practice Act Rule	38473	AMD	06/23/2014	2014-10/9
R156-31b	Nurse Practice Act Rule	38475	R&R	06/23/2014	2014-10/11
R156-38a-401	Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien	38533	NSC	05/29/2014	Not Printed
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
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-55a-301	License Classifications - Scope of Practice	38380	NSC	04/14/2014	Not Printed
R156-60	Mental Health Professional Practice Act Rule	38421	5YR	04/08/2014	2014-9/50
R156-60-102	Definitions	38390	AMD	05/22/2014	2014-8/6
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-63a	Security Personnel Licensing Act Contract Security Rule	38450	AMD	06/23/2014	2014-10/45
R156-63b	Security Personnel Licensing Act Armored Car Rule	38474	AMD	06/23/2014	2014-10/48
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
R156-69	Dentist and Dental Hygienist Practice Act Rule	38149	AMD	01/21/2014	2013-24/20
R156-72	Acupuncture Licensing Act Rule	38165	AMD	02/10/2014	2014-1/8
R156-77	Direct-Entry Midwife Act Rule	38375	AMD	05/22/2014	2014-8/7
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

Real Estate

R162-2f	Real Estate Licensing and Practices Rules	38213	AMD	02/25/2014	2014-2/4
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38270	AMD	03/31/2014	2014-4/16
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38389	AMD	05/22/2014	2014-8/8

CORRECTIONS

Administration

R251-111	Government Records Access and Management	38255	NEW	03/26/2014	2014-4/25
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CRIME VICTIM REPARATIONS

Administration

R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	2014-4/75
R270-3	ADA Complaint Procedure	38498	5YR	05/12/2014	2014-11/171
R270-4	Government Records Access and Management Act	38259	EXT	01/27/2014	2014-4/75

R270-4 Government Records Access and Management Act 38499 5YR 05/12/2014 2014-11/171

EDUCATION

Administration

R277-102 Adjudicative Proceedings 38408 5YR 04/04/2014 2014-9/51
R277-105 Recognizing Constitutional Freedoms in the Schools 38409 5YR 04/04/2014 2014-9/51
R277-105 Recognizing Constitutional Freedoms in the Schools 38432 AMD 06/09/2014 2014-9/8
R277-116 Utah State Board of Education Internal Audit Procedure 38183 AMD 02/07/2014 2014-1/10
R277-117 Utah State Board of Education Protected Documents 38295 5YR 02/13/2014 2014-5/59
R277-117 Utah State Board of Education Protected Documents 38299 AMD 04/07/2014 2014-5/16
R277-118 LEA Post-employment Benefits Plans 38433 NEW 06/09/2014 2014-9/11
R277-119 Discretionary Funds 38357 NEW 05/08/2014 2014-7/7
R277-400 School Emergency Response Plans 38296 5YR 02/13/2014 2014-5/59
R277-400 School Emergency Response Plans 38300 AMD 04/07/2014 2014-5/17
R277-400-5 Plan(s) Content--Educational Services and Student Supervision and Building Access 38426 NSC 04/29/2014 Not Printed
R277-410-5 Accreditation Procedures 38434 AMD 06/09/2014 2014-9/13
R277-419-9 Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors for School Year 2014-2015 38585 EMR 06/09/2014 2014-13/129
R277-437 Student Enrollment Options 38185 AMD 02/07/2014 2014-1/12
R277-438 Dual Enrollment 38347 5YR 03/14/2014 2014-7/89
R277-462 Comprehensive Counseling and Guidance Program 38591 5YR 06/10/2014 2014-13/137
R277-463 Class Size Average and Pupil-Teacher Ratio Reporting 38590 5YR 06/10/2014 2014-13/138
R277-470-6 Charter School Mentoring Program 38186 AMD 02/07/2014 2014-1/14
R277-472 Charter School Student Enrollment and Transfers and School District Capacity Information 38589 5YR 06/10/2014 2014-13/138
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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	

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<u>access to information</u> Administrative Services, Administration	38570	R13-2	5YR	06/02/2014	2014-12/53
<u>accidents</u> Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14
<u>accounts receivable</u> Administrative Services, Debt Collection	38497 38496	R21-2 R21-3	NSC NSC	05/29/2014 05/29/2014	Not Printed Not Printed
<u>accreditation</u> Education, Administration	38434	R277-410-5	AMD	06/09/2014	2014-9/13
<u>acupuncture</u> Commerce, Occupational and Professional Licensing	38165	R156-72	AMD	02/10/2014	2014-1/8
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<u>adjudicative process</u> Administrative Services, Debt Collection	38497	R21-2	NSC	05/29/2014	Not Printed
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	38464	R477-101	AMD	07/01/2014	2014-10/92
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	38463	R477-15	AMD	07/01/2014	2014-10/90
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	38327	R602-7	5YR	03/05/2014	2014-7/94
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	38061	R307-110-17	AMD	01/09/2014	2013-21/8
	38261	R307-150	5YR	01/28/2014	2014-4/70
	38104	R307-210-2	AMD	03/06/2014	2013-23/17
	38105	R307-214-3	AMD	03/06/2014	2013-23/18
	38166	R307-302	AMD	03/06/2014	2014-1/20
	37829	R307-335	AMD	06/02/2014	2013-15/23
	37829	R307-335	CPR	06/02/2014	2013-23/54
	37829	R307-335	CPR	06/02/2014	2014-7/85
	37829	R307-335	CPR	06/02/2014	2014-9/46
	38332	R307-357-4	AMD	05/08/2014	2014-7/16
	38495	R307-357-4	NSC	05/29/2014	Not Printed
	37833	R307-401-19	AMD	01/06/2014	2013-15/29
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	38425	R23-29	R&R	06/09/2014	2014-9/4	
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