

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

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

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SPECIAL NOTICES

Commerce Occupational and Professional Licensing

Public Notice of 2016 Board and Committee Meeting Schedules

NOTE: Meetings are subject to change - contact the Division at 801-530-6628 to confirm meetings or check the Public Meeting Notice website (www.pmn.utah.gov). Most meetings are held in the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

January

- 6 Plumbers Licensing Board 9:00 a.m.
- 6 Utah Board of Accountancy 1:30 p.m.
- 7 Nursing Advisory Peer Education Committee 8:30 a.m.
- 7 Alarm System Security and Licensing Board 9:00 a.m.
- 7 Psychologist Licensing Board 1:00 p.m.
- 13 Residence Lien Recovery Fund Board 8:15 a.m.
- 13 Podiatric Physician Board 8:30 a.m.
- 13 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 14 Board of Nursing 8:30 a.m.
- 14 UBCC Electrical Advisory Committee 2:00 p.m.
- 19 Acupuncture Licensing Board 9:00 a.m.
- 19 Board of Massage Therapy 9:00 a.m.
- 19 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 19 UBCC Education Advisory Committee 1:30 p.m.
- 20 Physicians Licensing Board 9:00 a.m.
- 20 Speech-Language Pathology and Audiology Licensing Board 9:00 a.m.
- 20 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 21 Electricians Licensing Board 9:00 a.m.
- 21 Veterinary Licensing Board 9:00 a.m.
- 26 Utah State Board of Pharmacy 8:30 a.m.
- 26 Chiropractic Physician Licensing Board 9:00 a.m.
- 26 Optometrist Licensing Board 9:00 a.m.
- 26 Athletic Trainer Licensing Board 9:00 a.m.
- 27 Construction Services Commission 9:00 a.m.
- 28 Hearing Instrument Specialist Licensing Board 9:00 a.m.
- 28 Contract Security Education Peer Committee 10:00 a.m.

February

- 2 Online Prescribing, Dispensing and Facilitation Licensing Board 9:30 a.m.
- 3 Plumbers Licensing Board 9:00 a.m.
- 3 Utah Board of Accountancy 1:30 p.m.
- 10 Residence Lien Recovery Fund Board 8:15 a.m.
- 10 Architects Licensing Board 10:00 a.m.
- 11 Board of Nursing 8:30 a.m.
- 11 Security Services Licensing Board 9:00 a.m.
- 11 Social Worker Licensing Board 9:00 a.m.
- 11 Osteopathic Physician and Surgeon Licensing Board 9:00 a.m.
- 11 Professional Geologist Licensing Board 10:00 a.m.
- 16 UBCC Education Advisory Committee 1:30 p.m.
- 17 Funeral Service Board 9:00 a.m.
- 17 Vocational Rehabilitation Counselor Licensing Board 2:00 p.m.
- 18 Electricians Licensing Board 9:00 a.m.
- 23 Utah State Board of Pharmacy 8:30 a.m.
- 24 Health Facility Administrators Licensing Board 9:00 a.m.
- 24 Construction Services Commission 9:00 a.m.
- 26 Licensed Direct-Entry Midwife Board 9:00 a.m.

SPECIAL NOTICES

March

- 1 UBCC Architectural Advisory Committee and Unified Code Analysis Council 9:00 a.m.
- 2 Plumbers Licensing Board 9:00 a.m.
- 2 Utah Board of Accountancy 1:30 p.m.
- 3 Alarm System Security and Licensing Board 9:00 a.m.
- 3 Dentist and Dental Hygienist Licensing Board 9:00 a.m.
- 3 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 3 UBCC Structural Advisory Committee 3:00 p.m.
- 7 Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board 8:30 a.m.
- 8 UBCC Mechanical Advisory Committee 2:00 p.m.
- 9 Residence Lien Recovery Fund Board 8:15 a.m.
- 9 Uniform Building Code Commission 9:00 a.m.
- Board of Nursing 8:30 a.m.
- 10 Radiology Technologist Licensing Board 1:00 p.m.
- 10 UBCC Electrical Advisory Committee 2:00 p.m.
- 11 Marriage and Family Therapist Licensing Board 9:00 a.m.
- 14 Physician Assistant Licensing Board 9:00 a.m.
- 14 Controlled Substance Advisory Committee 4:00 p.m.
- 15 Respiratory Care Licensing Board 9:00 a.m.
- 15 Physical Therapist Licensing Board 9:00 a.m.
- 15 Building Inspector Licensing Board 9:00 a.m.
- 15 UBCC Education Advisory Committee 1:30 p.m.
- 16 Physicians Licensing Board 9:00 a.m.
- 16 Clinical Mental Health Counselor Board 9:00 a.m.
- 16 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 17 Electricians Licensing Board 9:00 a.m.
- 17 Certified Court Reporters Board 2:00 p.m.
- 22 Utah State Board of Pharmacy 8:30 a.m.
- 22 Board of Massage Therapy 9:00 a.m.
- 30 Construction Services Commission 9:00 a.m.

April

- 5 Occupational Therapy Board 9:00 a.m.
- 6 Plumbers Licensing Board 9:00 a.m.
- 6 Utah Board of Accountancy 1:30 p.m.
- 7 Nursing Advisory Peer Education Committee 8:30 a.m.
- 7 Social Worker Licensing Board 9:00 a.m.
- 7 Environmental Health Scientist Board 9:00 a.m.
- 13 Residence Lien Recovery Fund Board 8:15 a.m.
- 13 Podiatric Physician Board 8:30 a.m.
- 13 Architects Licensing Board 10:00 a.m.
- 14 Board of Nursing 8:30 a.m.
- 14 Security Services Licensing Board 9:00 a.m.
- 14 Genetic Counselor Licensing Board 9:00 a.m.
- 19 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 19 UBCC Education Advisory Committee 1:30 p.m.
- 20 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 20 Landscape Architects Licensing Board 1:00 p.m.
- 20 Deception Detection Examiners Board 1:00 p.m.
- 21 Electricians Licensing Board 9:00 a.m.
- 21 Contract Security Education Peer Committee 10:00 a.m.
- 21 Psychologist Licensing Board 1:00 p.m.
- 26 Utah State Board of Pharmacy 8:30 a.m.
- 26 Chiropractic Physician Licensing Board 9:00 a.m.
- 26 Optometrist Licensing Board 9:00 a.m.
- 26 Athletic Trainer Licensing Board 9:00 a.m.
- 27 Construction Services Commission 9:00 a.m.
- 28 Hearing Instrument Specialist Licensing Board 9:00 a.m.

May

- 4 Plumbers Licensing Board 9:00 a.m.
- 4 Utah Board of Accountancy 1:30 p.m.
- 5 Alarm System Security and Licensing Board 9:00 a.m.
- 11 Residence Lien Recovery Fund Board 8:15 a.m.
- 11 Dietitian Board 9:00 a.m.
- 12 Board of Nursing 8:30 a.m.
- 12 Osteopathic Physician and Surgeon Licensing Board 9:00 a.m.
- 17 Board of Massage Therapy 9:00 a.m.
- 17 UBCC Education Advisory Committee 1:30 p.m.
- 17 Certified Nurse Midwife Board 2:00 p.m.
- 18 Funeral Service Board 9:00 a.m.
- 18 Physicians Licensing Board 9:00 a.m.
- 18 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 19 Electricians Licensing Board 9:00 a.m.
- 24 Utah State Board of Pharmacy 8:30 a.m.
- 25 Construction Services Commission 9:00 a.m.

June

- 1 Plumbers Licensing Board 9:00 a.m.
- 1 Utah Board of Accountancy 1:30 p.m.
- 2 Nursing Advisory Peer Education Committee 8:30 a.m.
- 2 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 2 Veterinary Licensing Board 9:00 a.m.
- 2 Dentist and Dental Hygienist Licensing Board 9:00 a.m.
- 2 Social Worker Licensing Board 9:00 a.m.
- 2 UBCC Structural Advisory Committee 3:00 p.m.
- 6 Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board 8:30 a.m.
- 7 UBCC Architectural Advisory Committee and Unified Code Analysis Council 9:00 a.m.
- 8 Residence Lien Recovery Fund Board 8:15 a.m.
- 8 Uniform Building Code Commission 9:00 a.m.
- 8 Architects Licensing Board 10:00 a.m.
- 9 Board of Nursing 8:30 a.m.
- 9 Security Services Licensing Board 9:00 a.m.
- 9 Professional Geologist Licensing Board 10:00 a.m.
- 9 UBCC Electrical Advisory Committee 2:00 p.m.
- 10 Marriage and Family Therapist Licensing Board 9:00 a.m.
- 13 Physician Assistant Licensing Board 9:00 a.m.
- 13 Controlled Substance Advisory Committee 4:00 p.m.
- 14 UBCC Mechanical Advisory Committee 2:00 p.m.
- 16 Electricians Licensing Board 9:00 a.m.
- 16 Naturopathic Physicians Licensing Board 9:00 a.m.
- 16 Private Probation Provider Licensing Board 10:00 a.m.
- 20 Speech-Language Pathology and Audiology Licensing Board 9:00 a.m.
- 21 Acupuncture Licensing Board 9:00 a.m.
- 21 Physical Therapist Licensing Board 9:00 a.m.
- 21 Building Inspector Licensing Board 9:00 a.m.
- 21 UBCC Education Advisory Committee 1:30 p.m.
- 22 Clinical Mental Health Counselor Board 9:00 a.m.
- 28 Utah State Board of Pharmacy 8:30 a.m.
- 29 Construction Services Commission 9:00 a.m.

July

- 6 Plumbers Licensing Board 9:00 a.m.
- 6 Utah Board of Accountancy 1:30 p.m.
- 7 Alarm System Security and Licensing Board 9:00 a.m.
- 7 Psychologist Licensing Board 1:00 p.m.
- 13 Residence Lien Recovery Fund Board 8:15 a.m.
- 13 Podiatric Physician Board 8:30 a.m.

SPECIAL NOTICES

- 13 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 14 Board of Nursing 8:30 a.m.
- 14 Radiology Technologist Licensing Board 1:00 p.m.
- 19 Board of Massage Therapy 9:00 a.m.
- 19 UBCC Education Advisory Committee 1:30 p.m.
- 20 Physicians Licensing Board 9:00 a.m.
- 20 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 21 Electricians Licensing Board 9:00 a.m.
- 21 Contract Security Education Peer Committee 10:00 a.m.
- 26 Utah State Board of Pharmacy 8:30 a.m.
- 26 Chiropractic Physician Licensing Board 9:00 a.m.
- 26 Optometrist Licensing Board 9:00 a.m.
- 26 Athletic Trainer Licensing Board 9:00 a.m.
- 27 Construction Services Commission 9:00 a.m.
- 28 Hearing Instrument Specialist Licensing Board 9:00 a.m.

August

- 2 Online Prescribing, Dispensing and Facilitation Licensing Board 9:30 a.m.
- 2 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 3 Plumbers Licensing Board 9:00 a.m.
- 3 Utah Board of Accountancy 1:30 p.m.
- 4 Social Worker Licensing Board 9:00 a.m.
- 10 Residence Lien Recovery Fund Board 8:15 a.m.
- 10 Environmental Health Scientist Board 9:00 a.m.
- 10 Architects Licensing Board 10:00 a.m.
- 11 Board of Nursing 8:30 a.m.
- 11 Security Services Licensing Board 9:00 a.m.
- 11 Osteopathic Physician and Surgeon Licensing Board 9:00 a.m.
- 16 UBCC Education Advisory Committee 1:30 p.m.
- 18 Electricians Licensing Board 9:00 a.m.
- 23 Utah State Board of Pharmacy 8:30 a.m.
- 23 Health Facility Administrators Licensing Board 9:00 a.m.
- 31 Construction Services Commission 9:00 a.m.
- 31 Funeral Service Board 9:00 a.m.

September

- 1 Dentist and Dental Hygienist Licensing Board 9:00 a.m.
- 1 Alarm System Security and Licensing Board 9:00 a.m.
- 1 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 1 UBCC Structural Advisory Committee 3:00 p.m.
- 6 UBCC Architectural Advisory Committee and Unified Code Analysis Council 9:00 a.m.
- 7 Plumbers Licensing Board 9:00 a.m.
- 7 Utah Board of Accountancy 1:30 p.m.
- 7 Uniform Building Code Commission 9:00 a.m.
- 8 Board of Nursing 8:30 a.m.
- 8 UBCC Electrical Advisory Committee 2:00 p.m.
- 9 Marriage and Family Therapist Licensing Board 9:00 a.m.
- 12 Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board 8:30 a.m.
- 12 Physician Assistant Licensing Board 9:00 a.m.
- 12 Clinical Mental Health Counselor Board 9:00 a.m.
- 12 Controlled Substance Advisory Committee 4:00 p.m.
- 13 UBCC Mechanical Advisory Committee 2:00 p.m.
- 14 Residence Lien Recovery Fund Board 8:15 a.m.
- 15 Electricians Licensing Board 9:00 a.m.
- 20 Board of Massage Therapy 9:00 a.m.
- 20 Physical Therapist Licensing Board 9:00 a.m.
- 20 Building Inspector Licensing Board 9:00 a.m.
- 20 Respiratory Care Licensing Board 9:00 a.m.
- 20 UBCC Education Advisory Committee 1:30 p.m.

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- 21 Physicians Licensing Board 9:00 a.m.
 - 21 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
 - 21 Deception Detection Examiners Board 1:00 p.m.
 - 23 Licensed Direct-Entry Midwife Board 9:00 a.m.
 - 27 Utah State Board of Pharmacy 8:30 a.m.
 - 28 Construction Services Commission 9:00 a.m.

October

- 5 Plumbers Licensing Board 9:00 a.m.
- 5 Utah Board of Accountancy 1:30 p.m.
- 6 Nursing Advisory Peer Education Committee 8:30 a.m.
- 6 Social Worker Licensing Board 9:00 a.m.
- 6 Veterinary Licensing Board 9:00 a.m.
- 10 Radiology Technologist Licensing Board 1:00 p.m.
- 12 Residence Lien Recovery Fund Board 8:15 a.m.
- 12 Podiatric Physician Board 8:30 a.m.
- 12 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 12 Architects Licensing Board 10:00 a.m.
- 13 Board of Nursing 8:30 a.m.
- 13 Security Services Licensing Board 9:00 a.m.
- 13 Professional Geologist Licensing Board 10:00 a.m.
- 13 Psychologist Licensing Board 1:00 p.m.
- 18 UBCC Education Advisory Committee 1:30 p.m.
- 19 Vocational Rehabilitation Counselor Licensing Board 2:00 p.m.
- 19 Landscape Architects Licensing Board 1:00 p.m.
- 20 Electricians Licensing Board 9:00 a.m.
- 20 Certified Court Reporters Board 2:00 p.m.
- 25 Utah State Board of Pharmacy 8:30 a.m.
- 25 Chiropractic Physician Licensing Board 9:00 a.m.
- 25 Optometrist Licensing Board 9:00 a.m.
- 25 Athletic Trainer Licensing Board 9:00 a.m.
- 26 Construction Services Commission 9:00 a.m.
- 27 Hearing Instrument Specialist Licensing Board 9:00 a.m.

November

- 1 Occupational Therapy Board 9:00 a.m.
- 2 Plumbers Licensing Board 9:00 a.m.
- 2 Utah Board of Accountancy 1:30 p.m.
- 3 Alarm System Security and Licensing Board 9:00 a.m.
- 9 Residence Lien Recovery Fund Board 8:15 a.m.
- 10 Board of Nursing 8:30 a.m.
- 10 Naturopathic Physicians Licensing Board 9:00 a.m.
- 10 Osteopathic Physician and Surgeon Licensing Board 9:00 a.m.
- 15 Utah State Board of Pharmacy 8:30 a.m.
- 15 Chiropractic Physician Licensing Board 9:00 a.m.
- 15 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 15 UBCC Education Advisory Committee 1:30 p.m.
- 15 Certified Nurse Midwife Board 2:00 p.m.
- 16 Funeral Service Board 9:00 a.m.
- 16 Physicians Licensing Board 9:00 a.m.
- 16 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 17 Electricians Licensing Board 9:00 a.m.
- 17 Contract Security Education Peer Committee 10:00 a.m.
- 30 Construction Services Commission 9:00 a.m.

December

- 1 Dentist and Dental Hygienist Licensing Board 9:00 a.m.
- 1 Social Worker Licensing Board 9:00 a.m.
- 1 UBCC Plumbing/Health Advisory Committee 9:00 a.m.

SPECIAL NOTICES

- 1 UBCC Structural Advisory Committee 3:00 p.m.
- 5 Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board 8:30 a.m.
- 6 Clinical Mental Health Counselor Board 9:00 a.m.
- 6 UBCC Architectural Advisory Committee and Unified Code Analysis Council 9:00 a.m.
- 7 Plumbers Licensing Board 9:00 a.m.
- 7 Uniform Building Code Commission 9:00 a.m.
- 7 Utah Board of Accountancy 1:30 p.m.
- 8 Board of Nursing 8:30 a.m.
- 8 Security Services Licensing Board 9:00 a.m.
- 8 UBCC Electrical Advisory Committee 2:00 p.m.
- 9 Marriage and Family Therapist Licensing Board 9:00 a.m.
- 12 Physician Assistant Licensing Board 9:00 a.m.
- 13 UBCC Mechanical Advisory Committee 2:00 p.m.
- 14 Residence Lien Recovery Fund Board 8:15 a.m.
- 14 Architects Licensing Board 10:00 a.m.
- 15 Electricians Licensing Board 9:00 a.m.
- 15 Private Probation Provider Licensing Board 10:00 a.m.
- 20 Utah State Board of Pharmacy 8:30 a.m.
- 20 Physical Therapist Licensing Board 9:00 a.m.
- 20 Building Inspector Licensing Board 9:00 a.m.
- 20 UBCC Education Advisory Committee 1:30 p.m.
- 28 Construction Services Commission 9:00 a.m.

Health
Health Care Financing, Coverage and Reimbursement Policy
Notice for December 2015 Medicaid Rate Changes

Effective December 1, 2015, 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

EXECUTIVE DOCUMENTS

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

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution.

Executive Military Advisory Committee, Utah Exec. Order No. 2015-10

EXECUTIVE ORDER

Executive Military Advisory Committee

WHEREAS, Utah proudly supports the military, service members and veterans;

WHEREAS, strong military communities in Utah provide for the defense of our State and Nation while contributing significantly to our economy; and

WHEREAS, national security installations, units, organizations and supporting enterprises within the State of Utah represent significant resources and vast training areas uniquely positioned to stimulate economic growth while meeting current and future defense needs of our country;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by the authority vested in me by the Constitution and laws of the State, do hereby order:

1. The creation of the Executive Military Advisory Committee (the Committee) for the State of Utah. The Committee shall:

- a. function as a body of expert advisors to provide counsel to the Governor on matters related to the military and the defense of the state and nation;
- b. coordinate military and defense efforts and resources among state agencies and community stakeholders;
- c. offer professional insights to help inform and shape Utah's military affairs consistent with the State's priorities and objectives; and
- d. create a coordinated plan to optimize the State's investment in national defense resources.

2. The Lieutenant Governor shall serve as the chair of the Committee; if the Lieutenant Governor is unable to attend a meeting, the Lieutenant Governor may designate another member to serve as chair for the meeting. Membership will include, but shall not be limited to:

- a. the Lieutenant Governor;
- b. The Adjutant General of the Utah National Guard;
- c. the Executive Director of the Utah Department of Veterans and Military Affairs;
- d. the Executive Director of the Utah Governor's Office of Economic Development;
- e. the Executive Director of the Utah Governor's Office of Management and Budget;
- f. the Executive Director of the Utah Department of Workforce Services;
- g. a representative of the Utah Defense Alliance appointed by the Governor;
- h. two representatives of the Utah business community appointed by the Governor; and
- i. other members as appointed by the Governor.

3. Committee Staff shall provide support and assistance to the committee as directed by the Lieutenant Governor. Staff shall be selected by the Lieutenant Governor and may include, but shall not be limited to:
- a. a Military Fellow provided by the Utah National Guard;
 - b. one Action Officer from both the Governor's Office of Economic Development and the Utah Department of Veterans and Military Affairs; and
 - c. a Senior Military Mentor, who possesses a broad, national-level, seasoned military perspective.
4. The Committee shall meet at least quarterly, but may meet as often as needed as determined by the Governor or the Lieutenant Governor;
5. The Committee should seek consultation, information and technical expertise from city and county governments, the directors of state agencies, federal agencies, business and industry professionals, and members of the public;
6. The Committee may adopt by-laws to govern meetings and operations consistent with this Order;
7. This order shall remain in effect until December 31, 2017.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 13th day of October 2015.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Lieutenant Governor
Spencer J. Cox

2015/010/EO

Calling the Sixty-First Legislature Into the Seventh Extraordinary Session, Utah Proclamation No. 2015-7E

PROCLAMATION

WHEREAS, since the close of the 2015 General Session of the 61th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 61th Legislature of the State of Utah into the Seventh Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 21th day of October 2015, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2015 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 19th day of October 2015.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2015/07/E

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a 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 October 16, 2015, 12:00 a.m., and November 02, 2015, 11:59 p.m. are included in this, the November 15, 2015, 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 December 15, 2015. 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 March 14, 2016, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Administrative Services, Finance
R25-7-6
Reimbursement for Meals

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39903

FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are necessary to prevent Utah meal per diem rates from exceeding federal meal per diem rates.

SUMMARY OF THE RULE OR CHANGE: The Tier I premium locations have changed (Atlanta, Anchorage, Baltimore, Boston, Chicago, Hawaii, New York City, San Francisco, Seattle and Washington, DC). The tier II premium locations have also changed (Austin, Dallas, Houston, Los Angeles, Orlando, and San Diego). Meal per diems have not changed, but will include the added cities to the tier I and tier II premium locations.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will potentially be an increased cost to the state for meal reimbursements because additional cities have been added to the tier I and tier II premium locations. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel to the premium locations by individuals eligible for reimbursements.

◆ LOCAL GOVERNMENTS: There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling to tier I and tier II premium locations on state business.

◆ SMALL BUSINESSES: Small businesses will not see an increase in revenue. The rule only governs reimbursements by the the state to individuals traveling to tier 1 and tier II premium locations on state business.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals will see an increase in their meal reimbursements amounts if they travel to the added tier I and tier II premiums locations with receipts. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and necessary to prevent Utah meal per diem rates from exceeding federal meal per diem rates. There will be no negative fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
 FINANCE
 ROOM 2110 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

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

R25-7-6. Reimbursement for Meals.

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

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

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

(a) The daily travel meal allowance for in-state travel is \$40.00 and is computed according to the rates listed in the following table.

.....

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

.....

(4) When traveling to a Tier I premium location (~~[Anchorage,]~~Atlanta, ~~[Austin,]~~Anchorage, Baltimore, Boston, Chicago, ~~[Dallas,]~~Hawaii, ~~[Houston, Los Angeles,]~~New York City, ~~[San Diego,]~~San Francisco, Seattle, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel or to be

reimbursed at the actual meal cost, with original receipts, up to \$65 per day.

When traveling to a Tier II premium location (~~Atlanta or Orlando~~ Austin, Dallas, Houston, Los Angeles, Orlando, and San Diego), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$56 per day.

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

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

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to \$50.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to \$45.

(iii) If dinner is provided deduct \$30, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$43.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$39.

(iii) If dinner is provided deduct \$26, leaving a premium allowance for breakfast and lunch of actual up to \$30.

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

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

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

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

.....

(b) The days at the location.

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

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

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

.....

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

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

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

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

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

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

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

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

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

Date of Enactment or Last Substantive Amendment: [June 22,] 2015

Notice of Continuation: April 15, 2013

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

**Administrative Services, Purchasing
and General Services
R33-26
State Surplus Property**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 39906

FILED: 11/02/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, and vehicles.

SUMMARY OF THE RULE OR CHANGE: Amendments to this rule were made to comply with S.B. 122 of the 2015 General Session pertaining to the policies and procedures

which govern the acquisition and disposition of state and federal surplus property, and vehicles.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-2-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: It is anticipated that the implementation of this rule, in connection with the statute, will save the state significant time and money through State Surplus conducting online auctions instead of training individual staff and agencies to conduct their own auctions.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings that are expected. The amendments to this rule were made to comply with S.B. 122 (2015) and will only affect state agencies through State Surplus conducting all auctions.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings that are expected. The amendments to this rule were made to comply with S.B. 122 (2015) and will only affect state agencies through State Surplus conducting all auctions.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings that are expected. The amendments to this rule were made to comply with S.B. 122 (2015) and will only affect state agencies through State Surplus conducting all auctions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons. The amendments to this rule were made to comply with S.B. 122 (2015) and simply address the policies and procedures which govern the acquisition and disposition of state and federal surplus property, and vehicles.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will not have a fiscal impact on businesses. The amendments to this rule were made to comply with S.B. 122 (2015) and simply address the policies and procedures which govern the acquisition and disposition of state and federal surplus property, and vehicles.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-26. State Surplus Property.

R33-26-101. State Surplus Property - General.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, and vehicles~~[-and firearms]~~. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property~~[-and the state surplus property contractor]~~.

R33-26-102. Requirements.

Under the provisions of Section 63A, Chapter 2, Section 103, the D[ivision of Purchasing and General Services shall manage and administer the State's surplus property program, including:

~~[(1) Except when a state surplus property contractor administers the state's program for disposition of state surplus property operate, manage, and maintain the state surplus property program;~~

~~[(2) When a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program.]~~

~~[(3)]~~ [1] [Manage t]The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

~~[(4)]~~ [2] [Manage t]The disposition of state owned surplus property, including vehicles and non-vehicle surplus property.

~~[(5) Control the sale or transfer of firearms from state agencies and participating local agencies, as authorized in Section 63A, Chapter 2, Section 4.]~~

~~[(6)]~~ [3] [Handheld devices/technology (not transferred from state agencies to public schools)]Information technology equipment.

R33-26-103. Definitions.

(1) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

(2) In addition:

(a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or

capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Bundled sale" means the act of packaging or grouping multiple State surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(5) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(6) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

~~(7) "Firearm" means any state-owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared to be surplus property by a local subdivision.~~

~~(8) "Handgun" means any pistol or revolver.~~

~~(9) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.~~

~~(10) "Licensed firearm dealer" means a firearms dealer licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.]~~

(11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(12) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(13) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(14) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(15) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(16) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(17)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(18) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(19)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(20) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(21) "Sailboat" means any vessel having one or more sails and propelled by wind.

(22) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(23)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;

(iii) ditch-digging apparatus; and

(iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(27) "USASP" means Utah State Agency for Surplus Property.

~~[(28)26]~~ "Vehicle" means: ~~[the items identified and defined in Rule R33-26-103, except items (5), (7),(8), (9) (15), and (27), and includes all auxiliary equipment and components associated or attached to the vehicle and equipment used by the vehicle for its intended purpose. Examples of auxiliary equipment and components include snow plow blades, spreaders, sanders, vehicle fire extinguishers, emergency equipment, radios, truck bed racks and truck bed covers, generators, mounted welders, non-OEM, lights and light bars, etc.]~~

~~(a) as defined in Rule R33-25-103:~~

~~(i) all-terrain vehicle type I and II,~~

~~(ii) aircraft,~~

~~(iii) camper,~~

~~(iv) farm tractor,~~

~~(v) motor boat,~~

~~(vi) motorcycle,~~

~~(vii) motor vehicle,~~

~~(viii) off highway vehicle,~~

~~(ix) personal watercraft,~~

~~(x) pickup truck,~~

~~(xi) reconstructed vehicle,~~

~~(xii) recreational vehicle,~~

~~(xiii) road tractor,~~

~~(xiv) sailboat,~~

~~(xv) semitrailer,~~

~~(xvi) special mobile equipment,~~

~~(xvii) trailer,~~

~~(xviii) travel trailer,~~

~~(xix) truck tractor,~~

~~(xx) vessel; and~~

~~[(29)27]~~ "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-26-201. Non-vehicle Disposition Procedures.

(1) State-owned non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.~~[-State-owned non-vehicle personal property shall not be processed by the division.]~~

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, it will:

(a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or

(b) notify ~~[the]~~state surplus property ~~[contractor]~~that the department or agency has surplus property.

R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

(a) Computers;

(b) Tablets (iPads, Surface Pro, Google Nexus, Samsung Galaxy, etc.);

(c) Smart phones;

(d) Personal Digital Assistants (PDAs);

(e) Digital copiers and multifunction printers;

(f) Flash drives and other portable data storage devices; and

(g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted ~~[by]~~via on-line auction or any other means.

~~[(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:~~

~~(A) the Executive Director of Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and~~

~~(B) the State Surplus Property Manager regarding the market value of the State-owned electronic data device.]~~

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or

(iii) Computers, digital copiers and multifunction printers that have had the hard drive destroyed may be resold by the contractor.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

R33-26-203. Information Technology Equipment.

(1) Subject to Subsections R33-26-202(1) and (2), State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency, contingent upon certification and approval from the

Department of Technology Services that all State-owned data has been removed from the equipment.

(2) Subject to Subsections R33-26-202(1) and (2), pursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers ~~[and sales of surplus property to state and local agencies]~~ shall have priority over transfers under this subsection.

(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to public institutions or non-profit entities, agencies shall comply with the provisions of Section R33-26-202.

(4) Subject to Subsections R33-26-202(1) and (2), except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.

R33-26-204. Federal Surplus Property.

(1) Federal Surplus Property is not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-205. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

- (a) has purchasing authority;
- (b) has maintenance authority;
- (c) has disposition or signature authority;
- (d) has authority regarding the disposal price;
- (e) has access to restricted information; and
- (f) has perceived to be a related party using other criteria which may prohibit independence.

R33-26-206. Priorities.

(1) Public agencies are given priority for the purchase of state-owned surplus property.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public ~~[through the state]~~ by surplus property ~~[contractor]~~.

(3) For this Rule, the entities listed below, in priority order, are considered to be public agencies:

- (a) state Agencies;
- (b) state Universities, Colleges, and Community Colleges;

(c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;

(d) other tax supported educational entities; then

(e) non-profit health and educational institutions.

(4) State-owned personal property that is not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

(a) the cost to the state;

(b) the potential liability to the state;

(c) the overall best interest of the state.

R33-26-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property.

~~[(2) The division will require regular and detailed accounting by the state surplus property contractor of:~~

~~(a) the receipt and sale of state surplus property;~~

~~(b) the receipt and payment of any and all funds; and~~

~~(c) ensure public transparency regarding the sale of state surplus property.~~

~~(3)~~(2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.

~~[(1) After paying the amount owed to the state surplus property contractor, the division shall transfer the remaining money to the agency that requested the sale of the particular item in accordance with Title 63J, Budgetary Procedures Act.~~

~~(2)~~(1) ~~[Vehicle reimbursements]~~ Reimbursement to state agencies from the sale of their vehicles and non-vehicle items will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles and non-vehicle items. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

~~(3)~~(2) Payment for vehicles, non-vehicle items, information technology equipment, federal surplus property, and personal handheld devices ~~[-and firearms]~~ shall be as follows:

(a) payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank ~~[credit]~~ financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding ~~[\$200]~~ \$100. Two-party checks shall not be accepted;

(b) payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) the division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

- (i) the cost to the state;
- (ii) the potential liability to the state; and
- (iii) the overall best interest of the state.

(4) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds":

(a) in the event that a check is returned to the division is returned for "insufficient fund," the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

R33-26-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

[R33-26-501. Surplus Firearms.

~~———— This subsection sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in Section 63A-2-4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.~~

R33-26-502. Procedures.

~~———— (1) All state owned firearms shall be disposed of under the general provisions of this Rule.~~

~~———— (a) The sale of firearms directly to the general public by the division is prohibited.~~

~~———— (b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.~~

~~———— (c) Except as provided in this subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.~~

~~———— (i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.~~

~~———— (ii) The division may authorize the sale of a handgun to a legally constituted law enforcement agency.~~

~~———— (iii) The division may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:~~

~~———— (A) the individual's name;~~

~~———— (B) the serial number of the handgun to be sold; and~~

~~———— (C) the signature of an authorized agent of the owning agency.~~

~~———— (2) All firearms retained by the division shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.~~

~~———— (a) Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.~~

~~———— (3) All firearms retained by the division shall be in good working condition.~~

~~———— (a) Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.]~~

R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.

R33-26-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.

- (1) No response need be filed to the notice of agency action or request for agency action.
- (2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.
- (3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.
- (4) A hearing will be held only after timely notice of the hearing has been given.
- (5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.
- (6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.
- (7) Any hearing held under this rule is open to all parties.
- (8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.
- (9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.
- (10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.
- (11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

R33-26-701. ~~[State Surplus Property Contractor]~~Disposition of State Surplus Property.

- ~~[(1) The state surplus contractor must be selected through a Request for Proposals that results in a term contract.~~
 - ~~(2) The contractor may sell state surplus property by auction, bid or other manner designed to get the best price available for the state surplus property.~~
 - ~~(3) The contractor may not engage in the sale of state surplus property in a manner that would constitute a conflict of interest.~~
 - ~~(4) The contractor must submit regular and detailed accounting to the division of:~~
 - ~~(a) the receipt and sale of state surplus property; and,~~
 - ~~(b) the receipt and payment of funds by the contractor.~~
 - ~~(5) The contractor must ensure public transparency regarding the sale of state surplus property and is required to:~~
 - ~~(a) post online information related to a sale or attempted sale of state surplus property that includes:~~
 - ~~(i) a detailed description of the item or items;~~
 - ~~(ii) the name of the state agency that requested the sale;~~
 - ~~(iii) the price at which the state surplus property was sold;~~
- and;

- ~~(iv) post the information within a period of time established by the division;~~
- ~~(6) The division may, through the contract with the state surplus contractor, require the state surplus contractor:~~
 - ~~(a) to store the state surplus property; or,~~
 - ~~(b) charge for the storage of state surplus property.]~~
- (1) The Division shall administer the disposition of State surplus property through the following methods:
 - (a) Online auction;
 - (b) Live auction;
 - (c) Pick up, sale, and disposal;
 - (d) Disposal;
 - (e) Destruction;
 - (f) Direct sale to the public; or
 - (g) Another method approved by the Director of the Division.
- (2) State agencies shall complete an SP-1 Form and electronically transmit it to State Surplus Property
 - (a) Completion of Form SP-1 meets the requirements set forth in Utah Code 63A-2-401(7) for a state agency to declare State property as surplus.
 - (b) The SP-1 Form may be accessed at <http://purchasing.utah.gov/stateagencylinks.html>.
 - (c) Information required on SP-1 Form
 - (A) a minimum of two digital photographs for each State surplus property item being listed for sale
 - (B) a brief description of the State surplus property item detailing its condition
 - (C) an estimate of the State surplus property's value
 - (D) the location of the State surplus property; an
 - (E) the contact information of the person assigned by the state agency to assist the public with the transaction.
- (3) Online auction shall be the primary method used for the disposition of non-vehicle state surplus property.
 - (a) Online auctions shall be administered by State Surplus Property.
 - (b) Each state agency will be responsible for
 - (i) Storing State surplus property on site until the online auction has been completed and the State surplus property is
 - (A) picked up by the person to whom the item has been sold to via online auction
 - (B) disposed of or donated by the state agency
 - (C) picked up by the vendor under contract with State Surplus Property; o
 - (D) picked up by a local vendor under contract with the state agency;
 - (ii) Assigning an employee of the agency to assist the public with the online auction including:
 - (A) answering questions about the State surplus property item
 - (B) providing directions
 - (C) scheduling the pickup
 - (D) other miscellaneous tasks; an
 - (iii) Developing internal policies regarding employees
 - (A) assisting the public with lifting and transporting State surplus property items
 - (B) transporting State surplus property items with a minimal value of less than \$100 to charities for donation

(C) receiving State surplus property items with a minimal value of less than \$100 as a donation by the state agency

(c) A state agency may seek an exception from the requirement to dispose of surplus property through online auction in accordance with Utah Code 63A-2-401(3).

(i) State agencies that are granted an exception must

(A) complete an SP-1 Form and transmit it to State Surplus Property; and

(B) coordinate with State Surplus Property to schedule a date and time for State surplus property items to be picked.

(4) The Division shall administer the disposition of surplus state owned vehicles through any method identified in R33-26-701(1).

(a) Surplus vehicles may be sold at the agency location or delivered to State Surplus Property for disposition.

(5)(a) For agencies along the Wasatch Front, State Surplus Property will contract with a vendor to pick up State surplus property items with a minimal value of less than \$100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.

(b) For agencies with offices outside the Wasatch Front, the agency may contract with a local vendor using the Small Purchase set forth in Utah Code 63G-6a-408 and Administrative Rule R33-4-104 to dispose of State surplus property items with a minimal value of less than \$100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.

R33-26-801. Donation, Disposal, or Destruction of State Surplus Property.

[(1) A state agency or department may donate to a charitable organization, destroy, or dispose of as waste any state surplus property that is worth less than \$30.00 without involvement of the division or state surplus property contractor if:

(a) the state surplus property fails to sell at auction;

(b) the cost of selling the state surplus property is greater or equal to the value of the state surplus property;

(c) the state surplus property is no longer usable;

(d) the state surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or

(e) the state surplus property can be replaced for less than the cost of repairing the state surplus property.]

(1)(a) State surplus property with a minimal value of less than \$100 may be disposed of as waste by a state agency in accordance with Utah Code 63A-2-411.

(b) State surplus property items that do not appreciate in value, with an initial purchase price of less than \$100 or deemed to be valued at less than \$100 by the State Surplus Property manager:

(i) may be disposed of as waste by a state agency by the means described in Utah Code 63A-2-411(3); or

(ii) State surplus Property items with a minimal value may be packaged together and sold as a bundled sale.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions

Date of Enactment or Last Substantive Amendment: [August 21,] 2015

Authorizing, and Implemented or Interpreted Law: 63A-2

Alcoholic Beverage Control, Administration **R81-2-10** State Store Hours

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39907

FILED: 11/02/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission.

SUMMARY OF THE RULE OR CHANGE: This commission rule authorizes the director to set hours of operations for each state store and establish internal department policies for sales during operational hours. The rule outlines the factors that must be considered in setting store hours and policies. The rule also requires commission oversight by requiring periodic reporting by the director as required by Subsection 32B-2-202(1)(k).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-2-206 and Subsection 32B-2-503(5)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission. Any cost to the state has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.

◆ **LOCAL GOVERNMENTS:** None--This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission and does not affect local government. Therefore, the amendment will not impose any cost or savings to local government.

◆ **SMALL BUSINESSES:** None--This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission. There are no anticipated cost or savings for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission. There are no anticipated cost or savings for persons other than small businesses, businesses or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission. This rule anticipates the needs of the consumer in setting store hours. There are no anticipated compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule amendment is necessary to authorize the director to set store operational hours for delivery and sales with oversight by the commission. There is no anticipated fiscal impact for businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov
 ♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Sal Petilos, Executive Director

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-10. State Store Hours.

(1) Authority and purpose: As authorized by 32B-2-503(5) (b), this rule establishes the days and hours for state stores operations.

(2) Authorized days of operation: State stores may not operate [Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open for the sale of liquor:

- _____ (a) on any day prohibited by 32B-2-503(5)(a) [;
- _____ (b) on any other day before 10 a.m. or later than 10 p.m.]

[~~(2)(3) Authorized hours of operation: [Subject to the restrictions of subsection (1), the department may adjust the sales hours for each state store based on such factors as the locality of the store, tourist traffic, demographics, population to be served, customer demand in the area, and budgetary constraints.] Pursuant to 32B-2-202(1) (b) and (k) and in accordance 32B-2-206(1) and(2), this rule authorizes the director to set hours of operations for each state store and establish internal department policies for sales during operational hours based on the following factors.~~

- _____ (a) the locality of the store;
- _____ (b) tourist traffic;

- _____ (c) demographics;
- _____ (d) population to be served;
- _____ (e) customer demand in the area;
- _____ (f) whether the store is designed for licensee sales; and
- _____ (g) budgetary constraints.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [August 25,] 2015

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: 32B-2-202

Commerce, Administration
R151-4
 Department of Commerce
 Administrative Procedures Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39894

FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change updates procedures to include electronic filing and clarifies procedures for discovery, stays, motions to dismiss, and deadlines.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies when a motion to dismiss may be brought when a case is under agency review; updates filing and service rules, and clarifies when methods of filing are considered complete; clarifies the scope of discovery; adds an explanation that the 30-day deadline to request agency review is jurisdictional and is not extended three days for mailing by Subsection R151-4-107(3); adds, as grounds for agency review, legal argument as to an objection to a ruling of the presiding officer, or as to procedure, or as to the legal validity of a statute or rule; and updates procedures when seeking to stay matters on agency review.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Section 63G-4-102

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** This rule clarifies and updates procedures and will not impact the state budget.
- ♦ **LOCAL GOVERNMENTS:** This rule clarifies and updates procedures and will not impact local government. Local governments are not typically involved in the procedures being updated by this rule.
- ♦ **SMALL BUSINESSES:** In the event small businesses are involved in the adjudicative process, this rule change will not have a negative financial impact. The availability of electronic

filing could nominally reduce costs previously associated with paper filing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will financially benefit individuals involved in the adjudicative process, allowing them the option of electronic filing and eliminating costs associated with paper filing and mailing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing clarifies procedures for a motion to dismiss a case on agency review, filing service, discovery, deadlines, grounds for agency review, and seeking a stay.

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

COMMERCE
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:

◆ Gregory Soderberg by phone at 801-530-6706, or by Internet E-mail at gsoderberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-4. Department of Commerce Administrative Procedures Act Rule.

R151-4-107. Computation of Time.

(1) Periods of time in department proceedings shall:

(a) exclude the first day of the act, event, or default from which the time begins to run; and

(b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.

(3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.

(ii) Except as provided in R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.

(b) No additional time is provided if service is accomplished by electronic means.

(4) Subsection (3) does not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1).

R151-4-302. [Time for Filing a] Motion to Dismiss.

(1) A motion to dismiss on a ground described in Rule 12(b) (1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading.

(2) In a case that is under agency review:

(a) A motion to dismiss may be brought for:

(i) failure to comply with a jurisdictional deadline;

(ii) failure to file a hearing transcript; or

(iii) failure to file a required memorandum.

(b) A motion to dismiss may not be brought on an allegation or argument as to:

(i) the sufficiency of a pleading or a memorandum in support thereof;

(ii) the sufficiency of the evidence; or

(iii) any other issue that requires substantive analysis.

R151-4-401. Filing.

(1)(a) Pleadings shall be filed with:

(i) the department or division in which the adjudicative proceeding is being conducted, which [

~~(A)] maintains the official file [and should receive original documents; and~~

~~(B) shall provide the pleading to the applicable board or commission]; and~~

(ii) any administrative law judge who is conducting all or part of the adjudicative proceeding [whose copy is a courtesy copy].

(b) The filing of discovery documents is governed by R151-4-512.

(2)(a)(~~+~~) A filing may be accomplished by:

(i) hand delivery of a paper copy, pursuant to Subsection (2)(b)(i); ~~or by~~

(ii) first class or certified mail, postage pre-paid, of a paper copy, pursuant to Subsection (2)(b)(i);

(iii) fax, pursuant to Subsection (2)(b)(ii); or

(iv) attachment to electronic mail, pursuant to Subsection (2)(b)(iii). ~~[to the department or division in which the adjudicative proceeding is being conducted]~~

~~[(~~+~~)](b)(i) [a] A filing by hand delivery or first class or certified mail is complete when it is received and date stamped by the department or division, as applicable, or the administrative law judge who is assigned to act as the presiding officer in the case. If delivery to the department or division occurs on a different day than does delivery to the administrative law judge, the earlier date stamp shall constitute the date of filing.~~

~~[(b)(ii) A filing [may be accomplished by electronic means if the original document is also mailed to the department or division the same day, as evidenced by a postmark or mailing certificate.~~

~~(ii) Filing by electronic means [by fax] is complete upon transmission if:~~

~~(A) compliant with Subsection (1);~~

~~(B) [transmission is] completed and received during the department's operating hours, 8 a.m. to 5 p.m. Mountain Time (Standard or Daylight Savings, as applicable), on days other than~~

~~Saturdays, Sundays, or state or federal holidays~~; otherwise, filing is complete on the next business day]; and

(C) ~~[(iii) A filing by electronic means is not effective unless the department or division]~~ the recipient receives all pages of the document transmitted.

~~(iii) A filing by attachment to electronic mail is complete upon transmission if:~~

~~(A) the requirements of Subsection (2)(b)(i) are met; and~~

~~(B) the party filing the document;~~

~~(I) also mails the document to the department or division and the administrative law judge the same day, as evidenced by a postmark; or~~

~~(II) prior to any applicable filing deadline, is expressly excused by the presiding officer from mailing the document.~~

~~[(iv)](d) The burden is on the party filing the document to ensure that a [transmission] filing is properly completed.~~

~~(e) All filings made on agency review shall be provided in paper copy.~~

R151-4-402. Service.

(1)(a) Pleadings filed by the parties and documents issued by the presiding officer shall be concurrently served on all parties.

(b) The party who files a pleading is responsible for service of the pleading.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(3)(a) Service may be accomplished by hand delivery of a paper copy, ~~or~~ by mail of a paper copy to the last known address of the intended recipient, or by attachment to electronic mail.

(b) Service by hand delivery is complete upon delivery to:

(i) the person who is required to be served;

(ii) any individual who is employed by, and physically present at, the business office of the person who is required to be served; or

(iii) a mailbox or dropbox that is:

(A) assigned to the person who is required to be served; and

(B) physically located at the person's place of business.

~~[(b)](c) Service by mail is complete upon mailing, as evidenced by a postmark.~~

~~[(c) Service may be accomplished by electronic means.]~~

(d) Service by attachment to electronic ~~[means]mail~~ is complete on transmission if transmission is completed during normal business hours, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays, at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed

by first class mail with postage prepaid, to) (by electronic means ~~[and first class mail]~~ to):

(Name(s) of parties of record)

(Address(es))

Dated this (day) day of (month), (year).

(Signature)

(Name and Title)

R151-4-502. Scope of Discovery.

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense ~~[of]~~:

(i) ~~(A)~~ of the party seeking discovery; or

~~[(ii)](B) of another party;~~

~~(ii) that is set forth in a pleading; and~~

~~(iii) that is brought pursuant to a statement of fact, information, or belief.~~

(2)(a) Subject to R151-4-502(3) and R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under R151-4-502(1) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

(i) has substantial need of the materials in the preparation of the case; and

(ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by R151-4-504.

R151-4-901. Availability of Agency Review and Reconsideration.

(1)(a) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.

(b) This 30-day deadline is jurisdictional. The three-day mailing rule in Section 151-4-107(3) does not apply and does not extend the jurisdictional deadline.

(2)(a) Agency review is not available for an order or decision entered by:

(i) the Utah Motor Vehicle Franchise Advisory Board; or

(ii) the Utah Powersport Vehicle Franchise Advisory Board.

(b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:

(i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;

(ii) a request for modification of a disciplinary order; or

(iii) a request under Section 58-1-404(4) for entry into the Diversion Program.

(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; or

(iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.

(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under R151-4-901(2)(a), (2)(b)(ii), and (2)(c).

(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under R151-4-901(2)(b)(i) and (2)(b)(iii).

R151-4-902. Request for Agency Review - Transcript of Hearing - Service.

(1) A request for agency review shall:

(a) comply with Subsection 63G-4-301(1)(b) and this section (R151-4-902); and

(b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

(a) appropriate legal authority; and

(b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to:

(i) marshal or gather all the evidence in support of the finding; and

(ii) show that despite that evidence, the finding is not supported by substantial evidence.

(c) The failure to marshal the evidence permits the executive director to accept a division's findings of fact as conclusive.

(d) A party challenging a legal conclusion must support the argument with citation to:

(i) relevant authority; and

(ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

(i) certify that the transcript has been ordered;

(ii) notify the department when the transcript will be available; and

(iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.

(c) The party seeking agency review bears the cost of the transcript.

(5) Grounds for agency review that include any legal argument must be supported by specific citations to the transcript of the proceeding, indicating when the argument was raised and preserved in the proceeding. Examples of legal argument include but are not limited to:

(a) an objection to a ruling of the presiding officer;

(b) an argument regarding one or more procedures attendant to the proceeding; or

(c) an argument as to the legal validity, including the Constitutionality, of a statute or rule.

~~[(5)](6)(a)~~ A party seeking agency review shall, in the manner described in R151-4-401 and -402, file and serve on all parties copies of correspondence, pleadings, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

~~[(6)](7)~~ Failure to comply with this section (R151-4-902) may result in dismissal of the request for agency review.

R151-4-907. Stay ~~and Other Temporary Remedies~~ Pending Judicial Review.

(1) A party seeking judicial review of an order may file with the executive director a motion for a stay of the order pending judicial review. The motion for a stay shall be filed with the executive director on the same date that a timely petition for judicial review is filed with the court.

~~[(1)]2~~ Unless otherwise provided by statute, a motion for a stay of an order ~~[or other temporary remedy during the pendency of] pending judicial review shall include:~~

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay ~~[or other temporary remedy]~~ is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay ~~[or other temporary remedy]~~ is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay ~~[or other temporary remedy]~~ is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(3)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date that the motion is filed.

(b) Failure to oppose a timely motion under this Section shall result in an order granting the stay unless the executive director determines that a stay would not be in the public interest.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party filing the motion.

~~[(4)]2~~ The executive director may grant a motion for a stay of an order ~~[or other temporary remedy during the pendency of] pending judicial review if all of the criteria in R151-4-907 are met.~~

KEY: administrative procedures, adjudicative procedures, government hearings
Date of Enactment or Last Substantive Amendment: [~~April 10,~~ 2015
Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Occupational and Professional Licensing
R156-5a-302c
Qualifications for Licensure - Training Requirements

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 39854
 FILED: 10/20/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2015 General Session, S.B. 133 was passed expanding the scope of practice for a podiatric physician if additional training requirements are met. This proposed rule filing describes the acceptable documentation demonstrating the training required by S.B. 133. Both the Division and Podiatric Physicians Licensing Board have reviewed and are recommending these rule amendments.

SUMMARY OF THE RULE OR CHANGE: Section R156-51-302c is added to identify what documentation an applicant must provide in order to meet the requirements for an expanded scope of practice. Subsection R156-51-302c(1) lists acceptable documentation as verification from the American Board of Foot and Ankle Surgery stating the applicant is board qualifier. Subsection R156-51-302c(2) lists acceptable documentation as verification of a fellowship in foot and ankle surgery.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-5a-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 apply only to those persons that are required to be licensed podiatric physicians and seek to expand their scope of practice. As a result, the proposed amendments do not apply to local governments.
 ♦ **SMALL BUSINESSES:** The proposed amendments apply only to applicants and licensed podiatric physicians that seek to expand their scope of practice. Applicants and licensees

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 apply only to applicants for licensure as podiatric physicians and licensed podiatric physicians who may seek to expand the scope of their practice. The Division anticipates the proposed amendments will not result in any additional costs or savings beyond those already considered in the passage of S.B. 133 (2015).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to applicants for licensure as podiatric physicians and licensed podiatric physicians who may seek to expand the scope of their practice. The Division anticipates the proposed amendments will not result in any additional costs or savings beyond those already considered in the passage of S.B. 133 (2015).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this rule results from a change in state law, which expanded a podiatric physician's practice scope, if additional training requirements are met. This rule provides guidance on acceptable documentation for the required training. 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 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing. R156-5a. Podiatric Physician Licensing Act Rule. R156-5a-302c. Qualifications for Licensure - Training Requirements.

(1) In accordance with Subsection 58-5a-103(3)(b)(iii), acceptable documentation that the podiatric physician has completed training and experience in standard or advanced midfoot, rearfoot, and ankle procedures, shall consist of verification from the

American Board of Foot and Ankle Surgery that the applicant is currently board qualified.

(2) In accordance with Subsection 58-5a-103(3)(c)(iii), acceptable documentation that the podiatric physician has completed training and experience in standard or advanced midfoot, rearfoot, and ankle procedures, shall consist of verification of a fellowship in foot and ankle surgery from a program approved, at the time of completion, by the Council on Podiatric Medical Education.

KEY: licensing, podiatrists, podiatric physician

Date of Enactment or Last Substantive Amendment: ~~July 9, 2009~~ 2015

Notice of Continuation: September 16, 2013

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-5a-101

Commerce, Occupational and Professional Licensing

R156-40

Recreational Therapy Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39859

FILED: 10/26/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2015 General Session, H.B. 209 was passed requiring a therapeutic recreation technician applicant to complete two hours of suicide prevention training prior to licensure. H.B. 209 also requires that all individuals licensed under Title 58, Chapter 40, take at least two hours of continuing education training in suicide prevention. This proposed rule filing outlines the requirements of the training as required by statutory language.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-40-302a(3)(b) is being added to outline the standards of the suicide prevention training that a therapeutic recreation technician applicant must meet prior to licensure. In Subsection R156-40-304(1), the proposed amendment is made to indicate that the 20 hours of qualified continuing education shall include two hours of suicide prevention training. Subsection R156-40-304(4) is added to outline the continuing education standards that the required suicide prevention training shall meet. The remaining subsections are renumbered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-40-101 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 apply only to those required to be licensed under Title 58, Chapter 40, and applicants for licensure as therapeutic recreation technicians. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply only to those required to be licensed under Title 58, Chapter 40, and applicants for licensure as therapeutic recreation technicians. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. Also the Division does not anticipate any additional costs as a result of these proposed amendments beyond the costs considered in the passing of H.B. 209 (2015).

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply only to those required to be licensed under Title 58, Chapter 40, and applicants for licensure as therapeutic recreation technicians. The Division does not anticipate any additional costs as a result of these proposed amendments beyond the costs considered in the passing of H.B. 209 (2015).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to those required to be licensed under Title 58, Chapter 40, and applicants for licensure as therapeutic recreation technicians. The Division does not anticipate any additional costs as a result of these proposed amendments beyond the costs considered in the passing of H.B. 209 (2015).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing describes standards for suicide prevention training that a therapeutic recreation technician must meet prior to licensure, as well as requirements for suicide prevention training continuing education requirements after licensure. This filing could impact businesses that employ master therapeutic recreation specialists, therapeutic recreation specialists and therapeutic recreation technicians. This filing imposes a new continuing education requirement on these licensees, which in some cases, is paid for by the employer. It is expected that these costs would be minimal.

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:
 ♦ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-40. Recreational Therapy Practice Act Rule.
R156-40-302a. Qualifications for Licensure - Education Requirements.

In accordance with Section 58-40-302, the educational requirements for licensure include:

- (1) An MTRS applicant shall:
 - (a) complete an approved graduate degree as defined in R156-40-102(1);
 - (b) have a current NCTRC certification as a CTRS or a current license as a TRS; and
 - (c) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.
- (2) A TRS applicant shall:
 - (a) have a current NCTRC certification as a CTRS; and
 - (b) document completion of the education and practicum requirements for licensure as a TRS on an official university transcript.
- (3) A TRT applicant shall:
 - (a) have an approved educational course in therapeutic recreation taught by an MTRS, as required by Subsection 58-40-302(4)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:
 - (i) theories and concepts of recreational therapy;
 - (ii) the therapeutic recreation process;
 - (iii) characteristics of illness and disability and their effects on leisure;
 - (iv) medical and psychiatric terminology including psychiatric, pharmacology, gerontology, and abbreviations;
 - (v) ethics;
 - (vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and
 - (vii) health and safety[-]; and
 - (b) complete a two-hour pre-licensure course, as required by Subsection 58-40-302(4)(e), which shall meet the requirements of this Subsection.
 - (i) The course provider shall be one of the following:
 - (A) a recognized accredited college or university;
 - (B) a county, state, or federal agency; or

- (C) a professional association, society or organization representing a licensed profession.
- (ii) The content of the course shall be relevant to recreational therapy and include one or more of the following subject areas:
 - (A) suicide concepts and facts;
 - (B) suicide risk assessment, crisis intervention, and first aid;
 - (C) evidence-based intervention for suicide risk;
 - (D) continuity of care and follow-up services for suicide risk; or
 - (E) therapeutic alliances for intervention in suicide risk.
- (iii) Each hour of education shall consist of 50 minutes of education in the form of classroom lectures and discussion, workshops, webinars, online self-paced modules, case study review, or simulations.
- (iv) A course provider shall document and verify attendance and completion.
- (v) An applicant for licensure is responsible for submitting evidence of course completion to the Division as a prerequisite for licensure.

R156-40-304. Continuing Education.

In accordance with Section 58-40-304, qualified continuing education requirements are established as follows:

- (1) All licensed MTRS, TRS, and TRT's shall complete 20 hours of qualified continuing education including two hours of suicide prevention training that meets the requirements of this section~~[or provide a current CTRS certification during each two-year period of licensure].~~
- (2) Qualified continuing education hours for licensees who have not been licensed for the entire two-year period will be prorated from the date of licensure.
- (3) Continuing education under this section shall:
 - (a) be relevant to the licensee's professional practice;
 - (b) be prepared and presented by individuals who are qualified by education, training and experience to provide recreational therapy continuing education; and
 - (c) have a method of verification of attendance and completion.
- (4) The suicide prevention training shall include one or more of the following subject areas:
 - (a) suicide concepts and facts;
 - (b) suicide risk assessment, crisis intervention, and first aid;
 - (c) evidence-based intervention for suicide risk;
 - (d) continuity of care and follow-up services for suicide risk; or
 - (e) therapeutic alliances for intervention in suicide risk.
- ([4]5) Credit for continuing education shall be recognized in accordance with the following:
 - (a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by, or under the sponsorship of:
 - (i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges; or
 (iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of recreational therapy;

(b) a maximum of ten hours per two-year period may be recognized for teaching continuing education courses relevant to recreational therapy;

(c) a maximum of 12 hours per two-year period may be recognized for continuing education that is provided via the internet and/or webinar which provides a certificate of completion;

(d) a maximum of six hours per two-year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing;

(e) a maximum of four hours per two-year period may be recognized for CPR and first aid certification through a live course, not online; and

(f) a maximum of six hours per two-year period may be recognized for publications in an article, journal, newsletter or other professional publications.

[5]6 If properly documented that a licensee is subject to circumstances which prevent that licensee from meeting the continuing education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

[6]7 A licensee shall be responsible for maintaining competent records of completed qualified continuing education for a period of six years and if requested, demonstrate the licensee meets requirements under this section.

KEY: licensing, recreational therapy, recreation therapy
Date of Enactment or Last Substantive Amendment: [July 8, 2014]2015
Notice of Continuation: August 15, 2011
Authorizing, and Implemented or Interpreted Law: 58-40-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and
 Professional Licensing
R156-69-302d
 Licensing of Dentist-Educators

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39858
 FILED: 10/22/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2015 General Session, S.B. 28 repealed Section 58-69-302.5 which removed the license classification of dentist-educator and replaced it with an exemption provision. The Division and Dentist and Dental

Hygienist Licensing Board have reviewed and approved this proposed amendment.

SUMMARY OF THE RULE OR CHANGE: Section R156-69-302d with regards to licensing of dentist-educators is deleted in its entirety due to governing statute amendments made during the 2015 General Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-69-101 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.

◆ LOCAL GOVERNMENTS: The proposed amendment applies only to those that were required to be licensed dental-educators and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendment applies only to those that were required to be licensed dental-educators 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 amendment applies only to those that were required to be licensed dental-educators and applicants for licensure in that classification. The Division does not anticipate any further savings or costs beyond those identified in fiscal notes associated with S.B. 28 (2015).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment applies only to those that were required to be licensed dental-educators and applicants for licensure in that classification. The Division does not anticipate any further savings or costs beyond those identified in fiscal notes associated with S.B. 28 (2015).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing removes the dentist-educator license classification, which was repealed during the 2015 General Session and replaced with an exemption provision. 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:
 ♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov
 ♦ 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 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
 R156-69. Dentist and Dental Hygienist Practice Act Rule.**

~~[R156-69-302d. Licensing of Dentist-Educators.
 In accordance with Subsection 58-69-302.5(2)(a)(i), submission of information maintained in a practitioner data bank means submission to the National Practitioner Data Bank (NPDB).]~~

KEY: licensing, dentists, dental hygienists
Date of Enactment or Last Substantive Amendment: [January 21, 2014]2015
Notice of Continuation: March 10, 2011
Authorizing, and Implemented or Interpreted Law: 58-69-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Governor, Economic Development
 R357-3
 Refundable Economic Development
 Tax Credit**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39887
 FILED: 10/28/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes for this rule are to make it compliant with changes enacted by S.B. 179 passed during the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule updates definitions to comply with new statutory definitions including: "High Paying Job," "Leased Employees," and "Employee."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63N-2-104

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: These changes will not have any impact on state budget. They are simply being made to bring the rule in compliance with statutory changes.
 ♦ LOCAL GOVERNMENTS: Local governments will not be impacted by these changes because the changes do not impact any portion of the program related to local governments.
 ♦ SMALL BUSINESSES: Small business will not be impacted because they do not qualify for this program.
 ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Corporations that are being recruited will be impacted by this rule in the same way that the statutory changes in SB 179 will impact them. More specifically, the rule codifies new statutory requirements around wage criteria, hiring requirements, and overall incentive amount considerations such as location and capital expenditures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs related to affected persons because the incentive is post-performance and cannot be redeemed until after certain criteria are met.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no new fiscal impact created by this rule. The amendment is being drafted to bring the rule into compliance with the changes enacted by the legislature.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 GOVERNOR
 ECONOMIC DEVELOPMENT
 60 E SOUTH TEMPLE 3RD FLR
 SALT LAKE CITY, UT 84111
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Val Hale, Executive Director

**R357. Governor, Economic Development.
 R357-3. [Refundable]Economic Development Tax Increment Financing Tax Credit.**

R357-3-1. Authority.
 (1) Subsection 63N-2-104 requires the office to make rules establishing the conditions that a business entity must meet to qualify for a tax credit under 63N-2-101 et seq. of the Utah Code Annotated.

R357-3-2. Definitions.

(1) Terms in these rules are used as defined in UCA 63N-2-103.

(2) "Administrator" means the internal staff position(s) created by the Executive Director of GOED.

(3) "Direct investment within the geographic boundaries" means that the applicant for the tax credit will invest in a new commercial project in the economic development zones.

(4) "Employee," "Employee Position" or "Full Time Equivalent (FTE)" means an employee, or leased employee ~~[via a third party vendor]~~, who is a Utah resident working at and dedicated to the new commercial project. Each ~~[position]~~ Employee Position shall be entitled to the same basic health insurance, ~~[retirement and other benefits]~~, if any, given by the new commercial project to its other FTEs ~~[excluding]~~ in order for the Employee Position to count toward the hiring projection headcount. This is exclusive of those benefits given to any of the new commercial project's executive and other highly compensated employees ~~[except in the case where an FTE is a leased employee, in which case such leased employee should be entitled to comparable benefits as other leased employees]. Pursuant to 63N-2-103(4) benefits shall not be calculated into wage amounts for the purpose of determining high paying jobs.~~

(a) When counting FTEs, if an FTE has his or her employment with the new commercial project terminated for any reason before completion of the applicable year, another FTE otherwise meeting the requirements described above may be hired full-time to fill the terminated FTE's position and complete the year of qualifying full-time employment, so long as such position is filled within 60 days for a non-exempt FTE and 90 days for an exempt employee.

(5) "GOED" means The Governor's Office of Economic Development.

~~[(6) "High Paying Jobs" means:~~

~~(a) jobs associated with a new commercial project when the aggregate average wage is at least 100% of the average county wage, if the new commercial project is located within a rural county;~~

~~(b) jobs associated with a new commercial project when the aggregate average wage is at least 125% of the average county wage, if the new commercial project is located within an urban county; or~~

~~(c) upon application from an urban county, GOED may consider jobs associated with a new commercial project when the aggregate average wage is at least 100% of the average county wage, if the new commercial project would provide substantive unique benefit to the county, as determined by the GOED Board.]~~

~~[(d)](6) "Leased Employees" means Employees, Employee Positions, or FTEs contracted through a third party professional employee service, and such leased employees are entitled to comparable benefits as the other Employees, Employee Positions or FTEs, and that meet the definition of an Employee, Employee Position or FTE. For the sake of clarity, a "temporary" worker assigned short-term to a new commercial project shall not be considered a Leased Employee, Employee Position, or FTE.~~

~~(7) "Rural [County]" means the following counties:~~

- ~~(i) Beaver;~~
- ~~(ii) Box Elder;~~
- ~~(iii) Cache;~~

- (iv) Carbon;
- (v) Daggett;
- (vi) Duchesne;
- (vii) Emery;
- (viii) Garfield;
- (ix) Grand;
- (x) Iron;
- (xi) Juab;
- (xii) Kane;
- (xiii) Millard;
- (xiv) Morgan;
- (xv) Piute;
- (xvi) Rich;
- (xvii) San Juan;
- (xviii) Sanpete;
- (xix) Sevier;
- (xx) Summit;
- (xxi) Tooele;
- (xxii) Uintah;
- (xxiii) Wasatch;
- (xxiv) Washington; and
- (xxv) Wayne.

~~[(7) "Urban County" means the following counties:~~

- ~~(i) Davis;~~
- ~~(ii) Salt Lake;~~
- ~~(iii) Utah; and~~
- ~~(iv) Weber.~~

~~(8) "Wages" means gross earnings, including company contributed medical benefits, bonuses, and overtime pay.]~~

~~(8) "Target industry" means the industries designated as such by the GOED Board of Economic Development pursuant to 63N-3-110.~~

R357-3-3. Application Process.

(1) In order to apply for an Economic Development Tax Incentive, a business entity must submit an application in a form prescribed by GOED.

(2) In order to verify the information submitted in the application, the company may be required to supply additional information, which may include:

- (a) Balance Sheets;
- (b) Income Statements;
- (c) Cash Flow Statements;
- (d) Tax filings;
- (e) Market analyses;
- (f) Competing states' incentive offers;
- (g) Corporate structure;
- (h) Workforce data;

(i) Forecasted new state revenue associated with the new commercial project;

(j) Forecasted incremental job creation associated with the new commercial project;

(k) Forecasted wages associated with the new commercial project; or

(l) Other information as determined by GOED within its reasonable discretion.

(3) Information provided by the business entity is subject to the Government Records Access and Management Act. The business entity has the option, at its sole discretion and

responsibility, to designate what information provided is private or protected subject to UCA 63G-2-302 and/or UCA 63G-2-305.

(4) GOED will review the applications to consider at least the following factors:

(a) Whether the new commercial project meets the criteria set forth in UCA 63N-2-104 and UCA 63N-2-105;

(b) Whether the company is projecting positive long term growth;

(c) The overall benefit to the State of the new commercial project;

(d) The uniqueness of the economic opportunity;

(e) Other factors that, in conjunction with (a) through (d), would mitigate the loss or potential loss of new state and local revenues in the state, high paying jobs, new economic growth, or that address the factors set forth in UCA 63N-2-102 and 104.

(5) Pursuant to UCA 63N-3-110, the GOED Board of Economic Development shall determine which industries shall be targeted for economic development.

R357-3-4. Factors to Be Considered in Authorizing an Economic Development Tax Credit Award.

(1) The amount and duration of the tax credit award shall be determined on a case-by-case basis. Factors to be considered include but are not limited to:

(a) Whether the industry has been determined by the GOED Board as a ~~[targeted industry]~~ Target Industry;

(b) The competitive nature of the project, including whether the Company has secured real estate for its new commercial project at the time of application;

(c) To what extent other states have available incentives for the new commercial project, and the competitiveness of the other incentives, if known;

(d) Comparison to previously incented projects in size and scope, and in conjunction with other factors listed;

(e) The economic environment, including the unemployment rate and the underemployment rate, at the time the new commercial project or business entity applies;

(f) The location of the new commercial project;

(g) The average wage level of the forecasted jobs created;

(h) What terms would result in the most effective incentive for the new commercial project;

(i) The overall benefit to the State of the new commercial project;

(j) The demonstrated support of the local community for the project; and

(k) Other factors as reasonably determined by the ~~[administrator in consultation with the GOED Board]~~ Administrator.

(~~2~~)3 All annual tax credits shall be based on actual incremental taxes paid by the business entity or withheld on behalf of employees of a new commercial project.

(~~3~~)4 GOED shall propose a tax credit structure based on the factors set forth in this rule in a combination GOED deems the most effective and beneficial in weighing the benefits of the State, local community, and company.

(a) GOED shall propose the tax credit terms and structure to the GOED Economic Development Board prior to making a final offer to the business entity.

(~~4~~)5 The GOED Economic Development Board may advise GOED Executive Director regarding the Tax Credit Offer.

(~~5~~)6 If the Executive Director of GOED approves an Economic Development Tax Credit, GOED shall provide a tax credit offer letter to a business entity that includes:

(a) The proposed terms of the Economic Development Tax Credit, including the maximum amount of aggregate annual tax credits and the time period over which the Tax Credits may be claimed;

(b) the documentation that will be required each year in order to claim a tax credit for the following tax year as outlined in the Agreement.

(~~6~~)7 If the applicant intends to accept the incentive offer, it shall counter-execute the tax credit offer letter.

(~~7~~)8 If the Executive Director of GOED denies an application for an Economic Development Tax Credit, GOED shall provide a letter to the business entity that includes:

(a) Notice of the application denial;

(b) Reason for denial; and

(c) Notice that the business entity can reapply for a tax credit if changes to the proposed new commercial project are made.

R357-3-5. Application for and Verification of Information Supporting an Annual Economic Development Tax Credit.

(1) In order to receive a tax credit certificate during the term of an EDTIF agreement, a business entity must demonstrate to GOED's satisfaction, that the business entity has satisfied all of the criteria set forth in UCA 63N-2-103 and 63N-2-104, that the new commercial project resulted in new incremental tax revenue, that the contractual incremental job creation at the required wage criteria was achieved, and that the business entity is otherwise in compliance with the contractual requirements.

(a) If the jobs, wage, and other contractual criteria are met then a tax credit award is calculated annually based on the new commercial project's new state revenue performance for the disbursement period.

(2) In general, tax revenue shall be verified in the following ways with additional verification to be determined by GOED as needed:

(a) Employee Withholding Taxes: Report the employee withholding taxes remitted to the Utah State Tax Commission and dates paid.

(b) Vendor Paid Sales Tax: Report the Utah sales tax paid to vendors, total invoice amounts, and taxable total purchase amount.

(c) Corporate Income Taxes: Report the corporate tax in a format prescribed by GOED including Use Taxes from the annual ~~[quarterly]~~ tax filing.

(~~d~~)4 Annual, Quarterly or monthly Utah Sales and Use Tax Return TC-62 form report the Line 4 "Goods purchased tax free and used by you" amounts and date the taxes where remitted to the Utah tax commission.

(~~e~~)5 If the new commercial project is not inclusive of the Company's total Utah operation, documentation supporting the apportionment of corporate tax liability to the project is required. The apportionment methodology must be approved by the GOED Administrator and documented.

(3) In order to verify direct investment in an Economic Development Zone, when requested by GOED the applicant shall provide:

(a) a lease agreement or occupancy permit that shows that the new commercial project is located in the economic development zone, during the first applicable year.

(4) In order to verify new incremental jobs, GOED may review:

(a) Aggregate Employee data from the Department of Workforce Services; or

(b) Company or a Payroll vendor for the new commercial project provided a list that included the following information but is not limited to: the number of employees, the gross wages paid including overtime pay, bonuses and other compensation, and the taxes withheld for each employee of the new commercial project.

(5) In order to verify creation of new incremental jobs and to determine whether such jobs comply with the wage requirement, GOED shall consider and/or the applicant shall provide:

(a) The employee data provided by the Department of Workforce Services, the business entity, or the private professional employment or payroll organization.

(b) If a business entity fails to produce sufficient documentation to demonstrate increased state revenue and compliance with the terms of their contract, GOED shall either request additional information or deny the tax credit pursuant to UCA 63N-2-105(4).

R357-3-6. Requests for Modification of the Tax Credit Offer or Contract.

(1) GOED may modify, or a business entity may apply to modify, the terms of a tax credit agreement as set forth below.

(2) Nonsubstantive Modifications: GOED and the business entity may, by written amendment, make nonsubstantive modifications to the tax credit contract if:

(a) Necessary to correct clerical errors made in the initial application, the offer, the contract, or the tax credit;

(b) Necessary to make technical changes, including but not limited to: changing the business entity's legal name, timeline change subject to subsection (c) below, any other condition that does not alter the tax incentive amount or violate any state or federal law;

(c) For the purposes of this section, a timeline change of no more than 24 months is generally considered "nonsubstantive".

(d) all nonsubstantive modifications shall be documented and maintained by the GOED staff.

(3) Substantive Modifications: Under extraordinary circumstances, a business entity may apply to GOED to modify the terms of the tax credit agreement if:

(a) There is a substantial change to new commercial project plan; and

(b) Modifying the terms of the tax credit would benefit the State.

(4) Substantive Modifications be will brought to the GOED Executive Director for final approval after open consultation and comment with the GOED Board of Economic Development.

KEY: economic development, tax credit, jobs

Date of Enactment or Last Substantive Amendment: [April 13, 2015]

Notice of Continuation: May 30, 2013

Authorizing, and Implemented or Interpreted Law: 63N-2-104

Health, Administration
R380-60
Local Health Department Emergency
Protocols

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39879

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add closed point of dispensing (closed POD) into "Dispensing of Medication" section and add details about controlled substances that is part of the Strategic National Stockpile into existing rule.

SUMMARY OF THE RULE OR CHANGE: The rule change allows local health departments to distribute controlled substances as defined in statute. It also clarifies the function of closed PODs for medication dispensing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26A-1-114 and Subsection 26-23b-102(6) and Subsections 58-1-307(6), (7), (8), and (9) and Title 26, Chapter 23b

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No anticipated fiscal impact to the state budget because there are no changes in the rule requirements that are imposed by these amendments. State budget is not affected by this rule, as the medication and people administering this project are paid from federal funds.

◆ **LOCAL GOVERNMENTS:** No anticipated fiscal impact to local governments because there are no changes in the rule requirements that are imposed by these amendments. Local budget is not affected by this rule, as the medication and people administering this project are paid from federal funds.

◆ **SMALL BUSINESSES:** No anticipated fiscal impact to small businesses because there are no changes in the rule requirements that are imposed by these amendments. Small business budgets are not affected by this rule, as the medication and people administering this project are paid from federal funds. Small businesses are not used as closed PODs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated fiscal impact to businesses because there are no changes in the rule requirements that are imposed by these amendments. Other budgets are not affected by this rule, as the medication and people administering this project are paid from federal funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No anticipated fiscal impact for affected persons because there are no changes in the rule requirements that are imposed by these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment defines the terms "closed point of dispensing (closed POD)" and "receiving facility." A receiving facility is expanded to include federally recognized American Indian tribal entities and other organizations, such as closed PODs, that have a written agreement with the Department or a local health department. There is no fiscal impact to business because it makes no change to the requirements of entities governed by this rule.

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

HEALTH
ADMINISTRATION
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:

♦ Angie Stefaniak by phone at 801-538-6111, or by Internet E-mail at astefaniak@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R380. Health, Administration.

R380-60. Local Health Department Emergency Protocols.

R380-60-1. Authority and Purpose.

(1) These emergency protocols are adopted by the Department under authority of Utah Code Annotated Title 26-23b and Title 26A1-114 and as outlined in the Utah Code Annotated Title [Sections] 58-1-307(6), (7), (8), and (9).

(2) These protocols shall only be in effect during a public health emergency, as defined in Utah Code Annotated Title 26-23b-102(6)[declared emergency as defined herein].

R380-60-2. Definitions.

(1) Administer - means the direct application of a drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human by another person.

(2) Controlled Substance - as defined in Utah Code Annotated Title 58-37-2.

(3) Closed Point of Dispensing (Closed POD)- A closed POD is a private location where medications are dispensed to a specific group of people.

([2]4) Declaration of Emergency - means the declaration of a national, state (Utah Code Annotated Title [Section] 53-2a-206[63K-4-204]), local (Utah Code Annotated [Section] Title 53-2a-208[63K-4-304]) or public health emergency (Utah Code Annotated Title [Section] 26-23b-102(6)[and R389-702-10]).

([3]5) Department - means the Utah Department of Health.

([4]6) Dispense - means the interpretation, evaluation, and implementation of a prescription drug order or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration or use.

([5]7) Distribute - means to deliver a drug or device other than by administering or dispensing.

([6]8) Emergency Use Authorization (EUA) - means the authority of the US Food and Drug Administration (FDA) to approve the emergency use of drugs, devices, and medical products (including diagnostics) that were not previously approved, cleared, or licensed by FDA (hereafter, "unapproved") or the off-label use of approved products in certain well-defined emergency situations.

([7]9) Local Health Department - means a county or multicounty local health department established under Utah Code Title 26A.

(10) Receiving Facility - means a facility that is designated by the local health department to receive medications or supplies.

([8]11) Strategic National Stockpile[-(SNS)] - means a national repository of antibiotics, chemical antidotes, antitoxins, life-support medications, IV administration, airway maintenance supplies, and medical/surgical items.

([9]12) Triage - for purposes of this rule means the sorting of and allocation of treatment to patients according to priorities designed to maximize the number of survivors and optimize the use of available resources.

R380-60-3. Distribution of Medication (Non-controlled substances).

(1) Upon the declaration of an emergency as defined in R380-60-2, the Department shall coordinate the distribution of vaccine, antiviral, antibiotic or other prescription medication that is not a controlled substance received from the Strategic National Stockpile or another emergency stockpile and delivered to local health departments for further distribution, dispensing and administration.

(2) The local health department may distribute the medication received from the Department to emergency personnel and other receiving facilities as designated herein and within the local health department's jurisdiction. These receiving facilities may include the following:

~~[(3) If necessary to prevent or treat the disease or condition that gave rise to, or is a consequence of the emergency, the Department or local health departments may further distribute a vaccine, antiviral, antibiotic, or other medication that is not a controlled substance received from the Strategic National Stockpile or another emergency stockpile for dispensing or direct administration by a:]~~

(a) pharmacy (including back filling of inventory);

(b) prescribing practitioner;

(c) licensed health care facility;

(d) federally qualified community health clinic; or

(e) governmental entity for use by a community more than 50 miles from any facility listed in (a) to (d)[-];

(f) federally recognized American Indian tribal entities;

(g) other organizations that have a written agreement with the Department or local health department, such as a closed POD.

(4)3 The receiving facility [receiving medication from the Department or local health departments] shall be responsible for record keeping as provided for in [Section—]R380-60-[6]7 and for the tracking, storage and the proper return, disposal or destruction of any unused medication.

R380-60-4. Distribution of Medication (Controlled Substances).

(5)(1) A receiving facility [receiving medication] as provided in [Subsection—]R380-60-3(3)2) [must]shall follow applicable state or Federal law governing dispensing and administration of the medications.

R380-60-[4]5. Dispensing of Medication.

(1) After receiving medication distributed by the Department, the medical director or other person with authority to prescribe working in a local health department, may supervise or direct the dispensing of a vaccine, antiviral, antibiotic or other prescription medication that is not a controlled substance, under:

(a) a prescription or other lawful order by a person with authority to prescribe,

(b) the prescription procedure described in Section 58-17b-620(4),

(c) other procedures described in a written protocol approved by the medical director of the Department, or

(d) other conditions justifying the dispensing of the medication without a prescription, including the terms of an Emergency Use Authorization to:

(i) the contacts of a patient (contact of a patient with a physician patient relationship);

(ii) an individual working in a triage situation;

(iii) an individual receiving preventative or medical treatment in a triage situation;

(iv) an individual who does not have coverage for the prescription in the individual's health insurance plan;

(v) an individual involved in the delivery of medical or other emergency services; or

(vi) an individual who otherwise may have a direct impact on public health.

(2) If the person dispensing the vaccine, antiviral, antibiotic or other prescription medication is not a licensed pharmacist authorized to dispense medications under Title 58 Chapter 17b, the dispensing shall be conducted according to a written protocol approved by the medical director of the Department or the local health department.

(3) If the person dispensing the vaccine, antiviral, antibiotic or other prescription medication is not licensed to dispense, they shall follow procedures described in a written protocol approved by the medical director of the Department or the local health department.

R380-60-[5]6. Administration of Medication.

(1) After receiving medication distributed by the Department, the medical director or other person licensed to administer (scope of practice) working in a local health department, may supervise or direct the administration of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance under:

(a) a prescription or other lawful order by a person with authority to prescribe,

(b) the prescription procedure described in Section 58-17b-620(4),

(c) other procedures described in a written protocol approved by the medical director of the Department, or

(d) conditions for administration consistent with the terms of an Emergency Use Authorization to:

(i) the contacts of a patient;

(ii) an individual working in a triage situation;

(iii) an individual receiving preventative or medical treatment in a triage situation;

(iv) an individual who does not have prescription coverage;

(v) an individual involved in the delivery of medical or other emergency services; or

(vi) an individual who otherwise may have a direct impact on public health.

(2) If the person administering the vaccine, antiviral, antibiotic, or other prescription medication is not licensed to administer, the administration shall follow procedures described in a written protocol approved by the medical director of the Department or the local health department.

R380-60-[6]7. Record Keeping.

(1) Records regarding the inventory (lot number, expiration date, etc.), distribution, dispensing and administration (patient data collection) of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance shall be consistent with the terms of any Emergency Use Authorization or specific Strategic National Stockpile instructions.

(2) The Department, local health department or receiving facility described in Section R380-60-3 that dispenses or administers a vaccine, antiviral, antibiotic or other prescription medication under the authorization of this Rule shall comply with the conditions of any Emergency Use Authorization and shall keep an inventory record describing the drug and the name and contact information for each individual that received the drug.

(3) If the circumstances of the emergency make it impossible to keep these inventory records, the Executive Director of the Department may grant an exception to this requirement limiting the record keeping requirement to such records as are appropriate and possible in the circumstances of the emergency.

(4) If no exception is made by the Executive Director of the Department as described in R380-60-7(3), all record keeping shall be in effect as required by Utah Administrative Rule R156-37-602.

KEY: public health emergency

Date of Enactment or Last Substantive Amendment: [March 7, 2012]2015

Authorizing, and Implemented or Interpreted Law: 58-1-307(6); 58-1-307(7); 58-1-307(8); 58-1-307(9)

Health, Child Care Center Licensing
Committee
R381-60
Hourly Child Care Centers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39902

FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are mostly to clarify rules and to facilitate compliance.

SUMMARY OF THE RULE OR CHANGE: This rule changes are proposed by the Child Care Center Licensing Committee. They include needed definitions, clarification of some terms, explanation on needed training for new directors, renumbering, and the deletion of some no longer required processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No state agencies operate hourly child care centers. Therefore, the Department does not anticipate any cost or savings as a result of this change.

◆ LOCAL GOVERNMENTS: No local governments operate hourly child care centers. Therefore, the Department does not anticipate any cost or savings as a result of this change.

◆ SMALL BUSINESSES: Almost all hourly child care centers are small businesses. Since the proposed changes are mostly clarification to the current rule and training for new directors is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to child care small business.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this rule will not change any of the requirements for child care programs, except required training for new directors which is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to entities or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule will not change any of the requirements for child care programs, the Department does not anticipate any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment has no fiscal impact on business because the Department provides free training to meet the additional training requirements for directors.

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

HEALTH
CHILD CARE CENTER LICENSING COMMITTEE
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R381. Health, Child Care Center Licensing Committee.**R381-60. Hourly Child Care Centers.****R381-60-2. Definitions.**

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

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

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Director" means a person who meets the director qualifications of this rule, and who assumes the day-to-day responsibilities for the facility to be in compliance with Child Care Licensing rules.

(9) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can[-]not get to.

(14) "Infant" means a child aged birth through 11 months of age.

(15) "Infectious Disease" means an illness that is capable of being spread from one person to another.

~~[(15)]~~(16) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

~~[(16)]~~(17) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin or mineral supplements.

~~[(17)]~~(18) "Parent" means the parent or legal guardian of a child in care.

~~[(18)]~~(19) "Person" means an individual or a business entity.

~~[(19)]~~(20) "Physical Abuse" means causing nonaccidental physical harm to a child.

~~[(20)]~~(21) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

~~[(21)]~~(22) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials (ASTM) Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

~~[(22)]~~(23) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

~~[(23)]~~(24) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

~~[(24)]~~(25) "School Age" means kindergarten and older age children.

~~[(25)]~~(26) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(2).

~~[(26)]~~(27) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5b-103(10).

~~[(27)]~~(28) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.

~~[(28)]~~(29) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

- (a) a sandbox;
- (b) a stationary circular tricycle;
- (c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

~~[(29)]~~(30) "Toddler" means a child aged 12 months but less than 24 months.

~~[(30)]~~(31) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

~~[(31)]~~(32) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R381-60-6. Outdoor Environment.

If the center has an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R381-60-20(2).

(4) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat whenever there are children in the outdoor play area.

(8) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 18 inches, it shall have use zones that extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 20 inches, it shall have use zones that extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If loose material is used as protective cushioning, the depth of the material shall be at least 9 inches. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

(f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children

jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than the height specified in Table 1, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

.....

(10) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(11) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(12) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(13) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(14) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R381-60-7. Personnel.

(1) The center must have a director who is at least 21 years of age, who has completed the Center Director Training class offered by the Department, and who has one of the following:

(a) an associates, bachelors, or graduate degree in child development, early childhood education, elementary education, or recreation from an accredited college;

(b) a college degree in a related field with documented four courses of higher education completed in child development;

(c) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;

(d) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(e) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute~~[- offered through Child Care Resource and Referral]~~: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(f) two years experience in child care, elementary education, or a related field.

(2) Any new Center director must complete the Department's Center Director Training Class no later than 60 working days after assuming director duties.

~~[(2)](3)~~ All caregivers included in the required caregiver to child ratios shall be at least 18 years of age.

~~[(3)](4)~~ A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

~~[(4)](5)~~ Each new director, assistant director, caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) specific job responsibilities;

(b) the center's emergency and disaster plan;

(c) the current child care licensing rules found in Sections R381-60-11 through 24;

(d) procedure for releasing children to authorized individuals only;

(e) proper cleanup of body fluids;

(f) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(g) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(h) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

~~[(5)](6)~~ The following individuals shall complete a minimum of 10 hours of child care training each year, based on the center's license date:

(a) the director;

(b) all caregivers;

(c) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(d) all volunteers that the provider includes in the provider to child ratio.

~~[(6)](7)~~ Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

~~[(7)](8)~~ Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicensure date.

~~[(8)](9)~~ Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R381-60-11 through 24;

(b) a review of the center's policies and procedures and emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

~~(9)~~(10) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

~~(10)~~(11) A minimum of 5 hours of the required annual in-service training shall be face-to-face instruction.

R381-60-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R381-60-10(9) and (11);

(b) current animal vaccination records as required in R381-60-22(2);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) copy of all covered individuals' background screening cards issued by the Department, ~~if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and~~

~~if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.]~~

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent; and

(vi) medical conditions, including a certification that all immunizations are current.

(b) a transportation permission form, if the center provides transportation services;

(c) a six week record of medication permission forms, and a six week record of medications actually administered; and

(d) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) copy of the current background screening card issued by the Department, ~~approved initial CBS/LIS Consent and Release of Liability for Child Care" form];~~

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R381-60-10(2), R381-60-20(2)(d), and R381-60-21(2).

R381-60-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(3) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(4) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(5) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(8) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(10) There shall be no trampolines on the premises that are accessible to any child in care.

(11) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(12) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

R381-60-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center by the person dropping the child off and picking the child up, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the program with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs him or herself out of the program, a copy of the report shall be sent [~~mailed~~] to the parent, or given to the parent the next day the child attends the program.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R381-60-24. Infant and Toddler Care.

If the center cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) The provider shall clean and sanitize high chair trays prior to each use.

(3) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) Baby food, formula, and breast milk for infants that is brought from home for an individual child's use must be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(5) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(6) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.

(7) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(8) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(9) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

(10) Cribs used by a child in care must:

(a) have tight fitting mattresses;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail; [~~and~~]

(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails; [~~and~~]

(e) meet CPSC crib standards.

(11) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(12) Walkers with wheels are prohibited.

(13) Infants and toddlers shall not have access to objects made of styrofoam.

(14) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(15) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(16) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(17) Mobile infants and toddlers shall have freedom of movement in a safe area.

(18) All toys used by infants and toddlers shall be cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child plays with it; and

(c) after being contaminated by body fluids.

KEY: child care facilities, hourly child care centers

Date of Enactment or Last Substantive Amendment: [~~May 1,~~ 2015

Authorizing, and Implemented or Interpreted Law: 26-39-203(1)
(a)

Health, Child Care Center Licensing Committee **R381-70** Out of School Time Child Care Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39898

FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are mostly to clarify rules and to facilitate compliance.

SUMMARY OF THE RULE OR CHANGE: This rule changes are proposed by the Child Care Center Licensing Committee. They include needed definitions, clarification of some terms, explanation on needed training for new directors, renumbering, and the deletion of some no longer required processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Some state agencies operate Out of School Time Programs. However, the Department does not anticipate any cost or savings as a result of this change.

◆ **LOCAL GOVERNMENTS:** Some local governments operate Out of School Time Programs. Since the proposed changes are mostly clarification to the current rule and training for new directors is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to child care programs operated by state agencies.

◆ **SMALL BUSINESSES:** Almost all Out of School Time Programs are small businesses. Since the proposed changes are mostly clarification to the current rule and training for new directors is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to child care small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this rule will not change any of the requirements for child care programs, except required training for new directors which is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to entities or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule will not change any of the requirements for child care programs, the Department does not anticipate any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment has no fiscal impact on business because the Department provides free training to meet the additional training requirements for directors.

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

HEALTH

CHILD CARE CENTER LICENSING COMMITTEE

3760 S HIGHLAND DR

SALT LAKE CITY, UT 84106

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R381. Health, Child Care Center Licensing Committee.**R381-70. Out of School Time Child Care Programs.****R381-70-2. Definitions.**

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body Fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

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

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and that is at least 2" by 2" in size.

(8) "Director" means a person who meets the director qualifications of this rule, and who assumes the day-to-day responsibilities for the facility to be in compliance with Child Care Licensing rules.

(9)(9) "Direct Supervision" means the caregiver must be able to hear all of the children and must be near enough to intervene when necessary.

(10)(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11)(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12)(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13)(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can[-]not get to.

(14)(14) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(15)(15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(16)(16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies.

(17)(17) "Parent" means the parent or legal guardian of a child in care.

(18)(18) "Person" means an individual or a business entity.

(19)(19) "Physical Abuse" means causing non-accidental physical harm to a child.

(20)(20) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(21)(21) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidentally or deliberately passing through the barrier.

(22)(22) "Protective cushioning" means cushioning material that is approved by the American Society for Testing and Materials. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.

(23)(23) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(24)(24) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(25)(25) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1(2).

(26)(26) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(27)(27) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(28)(28) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(29)(29) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio, unless the volunteer meets all of the caregiver requirements of this rule.

R381-70-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area used by children shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, harmful objects, harmful substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat whenever there are children in the outdoor play area.

(8) Children shall have unrestricted access to drinking water whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards by the dates specified in Subsection (10) below.

(a) All stationary play equipment used by children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 30 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(b) Protective cushioning is required in all use zones.

(c) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

.....

(d) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

.....

(e) If wood products are used as cushioning material:

(i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and

(ii) there shall be adequate drainage under the material.

(f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall

maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than 30 inches and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

(h) Stationary play equipment shall have protective barriers on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(i) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(j) There shall be no protrusion or strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(k) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(l) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(10) The outdoor play equipment rules specified in Subsection (9) above must be in compliance by the following dates:

(a) by December 31, 2009: R381-70-6(9)(b-f). There is protective cushioning in all existing use zones that meets the requirements for depth and ASTM Standards.

(b) by December 31, 2010:

(i) R381-70-6(9)(g). Stationary play equipment that has a designated play surface less than 30 inches, and that does not have moving parts children sit or stand on, is not placed on concrete, asphalt, dirt, or any other hard surface, unless equipment is installed in concrete or asphalt footings.

(ii) R381-70-6(9)(j). There are no protrusion or strangulation hazards in or adjacent to the use zone of any piece of stationary play equipment.

(c) By December 31, 2011: R381-70-6(9)(g). Stationary play equipment that has a designated play surface less than 30 inches, and that does not have moving parts children sit or stand on, is not placed on concrete, asphalt, dirt, or any other hard surface.

(d) By December 31, 2012:

(i) R381-70-6(9)(h). Protective barriers are installed on all stationary play equipment that requires them, and the barriers meet the required specifications.

(ii) R381-70-6(9)(i). There are no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(iii) R381-70-6(9)(k). There are no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(e) By December 31, 2013:

(i) R381-70-6(9)(a)(i-vi). All stationary play equipment has use zones that meet the required measurements.

(ii) R381-70-6(9)(l). There are no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R381-70-7. Personnel.

(1) The program must have a director who is at least 21 years of age, who has completed the Center Director Training class offered by the Department, and who has one of the following educational credentials:

(a) an associate, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of coursework in childhood development, elementary education, or a related field;

(b) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(c) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of coursework in childhood development, elementary education, or a related field; or

(ii) valid proof of completion of the following six Utah Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute~~[offered through Child Care Resource and Referral]~~: Child Development: Ages and Stages; Advanced Child Development; School Age Course 1; School Age Course 2; School Age Course 3; and School Age Course 4.

(2) Any new Center director must complete the Department's Center Director Training Class no later than 60 working days after assuming director duties.

~~[(2)]~~(3) All caregivers shall be at least 18 years of age.

~~[(3)]~~(4) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

~~[(4)]~~(5) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with children.

~~[(5)]~~(6) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

~~[(6)]~~(7) Whenever there are ~~[more than 8]~~ children at the program, there shall be at least ~~one~~~~[two]~~ caregiver[s] present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. ~~[If there is only one caregiver present because there are 8 or fewer children at the program, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.]~~

~~[(7)]~~(8) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented and shall include the following topics:

(a) job description and duties;

(b) the program's written policies and procedures;

(c) the program's emergency and disaster plan;

(d) the current child care licensing rules found in Sections R381-70-11 through 22;

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean[-]up of body fluids;

(i) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the program's emergency and disaster plan.

~~[(8)]~~(9) The program director, assistant director, all caregivers, and substitutes who work an average of 10 hours a week or more, as averaged over any three month period, shall complete a minimum of 2 hours of training for each month during which they are employed, or 20 hours of training each year, based on the program's license date.

(a) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Annual training hours shall include the following topics:

(i) a review of the current child care licensing rules found in Sections R381-70-11 through 22;

(ii) a review of the program's written policies and procedures and emergency and disaster plans, including any updates;

(iii) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(iv) principles of child growth and development, including development of the brain; and

(v) positive guidance.

~~[(9)]~~(10) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R381-70-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R381-70-10(9) and R381-70-10(11);

(b) current animal vaccination records as required in R381-70-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) copy of all covered individuals' background screening cards issued by the Department. ~~[if the licensee has been licensed for one or more years, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes the licensee and all current providers, caregivers, and volunteers; and:~~

~~_____ (g) if the licensee has been licensed for one or more years, the most recent criminal background "Disclosure and Consent~~

~~Statement" which includes the licensee and all current providers, caregivers, and volunteers.]~~

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

- (i) name;
- (ii) date of birth;
- (iii) the parent's name, address, and phone number, including a daytime phone number;
- (iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) a current annual health assessment form as required in R381-70-14(5);

(c) a transportation permission form, if the program provides transportation services;

(d) a six week record of medication permission forms, and a six week record of medications actually administered; and

(e) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) ~~copy of the current background screening card issued by the Department [approved initial "CBS/LIS Consent and Release of Liability for Child Care" form];~~

(c) a six week record of days and hours worked;

(d) orientation training documentation for caregivers, and for volunteers who work at the program at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R381-70-10(2), R381-70-20(5)(d), and R381-70-21(2).

R381-70-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, ~~e-cigarettes, e-juice, e-liquids~~, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames; and

(h) razors or similarly sharp blades.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) Indoor stationary gross motor play equipment, such as slides and climbers, shall not have a designated play surface that exceeds 5-1/2 feet in height. If such equipment has an elevated designated play surface that is 3 feet or higher it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(8) There shall be no trampolines on the premises that are accessible to children in care.

(9) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

R381-70-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the facility for parents' review during business hours.

(2) Parents shall have access to the facility and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the facility or leave the facility:

(a) Each child must be signed in and out of the facility, including the date and time the child arrives or leaves.

(b) Children may sign themselves in and out of the program only with written permission from the parent.

(c) Persons signing children into the facility shall use identifiers, such as a signature, initials, or electronic code.

(d) Persons signing children out of the facility shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(e) Only parents or persons with written authorization from the parent may take any child from the facility. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the program director or director

designee, and the person picking the child up shall sign the report on the day of occurrence. If the child signs him or herself out of the program, a copy of the report shall be sent ~~[mailed]~~ to the parent.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R381-70-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the program's meal service complies with local health department food service regulations.

(b) Foods served by programs not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Programs not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

(d) The provider shall make available~~[post]~~ the current week's menu for parent review.

(2) On days when care is provided for three or more hours, the provider shall offer each child in care a meal or snack at least once every three hours.

(3) The provider shall serve children's food on dishes or napkins, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) If any child in care has a food allergy, the provider shall ensure that all caregivers who serve food to children are aware of the allergy, and that children are not served the food or drink they have an allergy or sensitivity to.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

KEY: child care facilities, child care, child care centers, out of school time child care programs

Date of Enactment or Last Substantive Amendment: ~~[May 1,]~~ 2015

Authorizing, and Implemented or Interpreted Law: 26-39-203(1) (a)

Health, Child Care Center Licensing
Committee
R381-100
Child Care Centers

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 39896
FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are mostly to clarify rules and to facilitate compliance.

SUMMARY OF THE RULE OR CHANGE: This rule changes are proposed by the Child Care Center Licensing Committee. They include needed definitions, clarification of some terms, explanation on needed training for new directors, renumbering, and the deletion of some no longer required processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-39-203(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Some state agencies operate child care centers. However, the Department does not anticipate any cost or savings as a result of this change.

◆ **LOCAL GOVERNMENTS:** Some local governments operate child care centers. Since the proposed changes are mostly clarification to the current rule and training for new directors is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to child care programs operated by state agencies.

◆ **SMALL BUSINESSES:** Almost all child care centers are small businesses. Since the proposed changes are mostly clarification to the current rule and training for new directors is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to child care small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this rule will not change any of the requirements for child care programs, except required training for new directors which is provided by Child Care Licensing at no cost, the Department does not anticipate any new costs or savings to entities or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule will not change any of the requirements for child care programs, the Department does not anticipate any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment has no fiscal impact on business in that it does not include any additional requirements for providers.

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

HEALTH
CHILD CARE CENTER LICENSING COMMITTEE
3760 S HIGHLAND DR

SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R381. Health, Child Care Center Licensing Committee.

R381-100. Child Care Centers.

R381-100-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

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

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Director" means a person who meets the director qualifications of this rule, and who assumes the day-to-day responsibilities for the facility to be in compliance with Child Care Licensing rules.

(9) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can[-]not get to.

(14) "Infant" means a child aged birth through 11 months of age.

(15) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(16) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(17) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin and mineral supplements.

(18) "Parent" means the parent or legal guardian of a child in care.

(19) "Person" means an individual or a business entity.

(20) "Physical Abuse" means causing non-accidental physical harm to a child.

(21) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(22) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(23) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidentally or deliberately passing through the barrier.

(24) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

(25) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(26) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(27) "School Age" means [~~kindergarten and older age~~] children ages five through twelve.

(28) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(1)(2).

(29) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(30) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.

(31) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

- (a) a sandbox;
- (b) a stationary circular tricycle;
- (c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(32) "Toddler" means a child aged 12 months but less than 24 months.

(33) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

~~(33)~~(34) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R381-100-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R381-100-20(5).

(5) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(7) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(8) The outdoor play area shall have a shaded area to protect children from excessive sun and heat whenever there are children in the outdoor play area.

(9) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(10) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(B) Use zones may overlap if two pieces of equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.

(C) The use zone in front of a slide may not overlap the use zone of any other piece of equipment.

(iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.

(iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment.

(v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending

members, and shall never overlap the use zone of another piece of equipment.

(vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment.

(viii) Swings shall have enclosed seats.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

.....

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

.....

- (g) If wood products are used as cushioning material[~~±~~]
- (i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and
- (ii) there shall be adequate drainage under the material.
- (h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:
 - (i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.
 - (ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.
- (i) Stationary play equipment that has a designated play surface less than the height specified in Table 3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

.....

- (j) On stationary play equipment used by infants and toddlers, protective barriers shall be provided on all play equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.
- (k) On stationary play equipment used by preschoolers, protective barriers shall be provided on all play equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.
- (l) On stationary play equipment used by school age children, protective barriers shall be provided on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.
- (m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.
- (n) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.
- (o) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.
- (p) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R381-100-7. Personnel.

(1) The center must have a director who is at least 21 years of age, who has completed the Center Director Training class offered by the Department, and who has one of the following educational credentials:

- (a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of early childhood development courses;
- (b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;
- (c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or
- (d) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

- (i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or
- (ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute~~[offered through Child Care Resource and Referral]~~: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(e) Any bachelors or higher college degree, and valid proof of completion of the following six Utah Early Childhood Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development. ~~[Center directors who used only the National Administrator Credential (NAC) to meet the director qualifications prior to 1 July 2006 have until 30 June 2011 to obtain the required additional training in early childhood development.]~~

(2) Any new Center director must complete the Department's Center Director Training Class no later than 60 working days after assuming director duties.

- ~~[(2)]~~(3) All caregivers shall be at least 18 years of age.
- ~~[(3)]~~(4) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.
- ~~[(4)]~~(5) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with any child in care.
- ~~[(5)]~~(6) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.
- ~~[(6)]~~(7) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

~~[(7)](8)~~ Whenever there are ~~[more than 8]~~ children at the center, there shall be at least ~~one~~~~[two]~~ caregiver[s] present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. ~~[If there is only one caregiver present because there are 8 or fewer children at the center, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.]~~

~~[(8)](9)~~ Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

- (a) job description and duties;
- (b) the center's written policies and procedures;
- (c) the center's emergency and disaster plan;
- (d) the current child care licensing rules found in Sections

R381-100-11 through 24;

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper cleanup of body fluids;

(i) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(k) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

~~[(9)](10)~~ The following individuals shall complete a minimum of 20 hours of child care training each year, based on the center's license date:

(a) the director;

(b) the assistant director, if the center has one;

(c) all caregivers;

(d) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(e) all volunteers that the provider includes in the provider to child ratio.

~~[(10)](11)~~ Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

~~[(11)](12)~~ Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicensure date.

~~[(12)](13)~~ Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R381-100-11 through 24;

(b) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

~~[(13)](14)~~ If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

~~[(14)](15)~~ A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R381-100-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R381-10(11)(12)(13)(14);

(b) current animal vaccination records as required in R381-100-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) copy of all covered individuals' background screening cards issued by the Department. ~~[if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and~~

~~_____ (g) if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.]~~

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) a current annual health assessment form as required in R381-100-14(5);

(c) for each infant, toddler, and preschooler, current immunization records or documentation of a legally valid exemption, as specified in R381-100-14(4);

(d) a transportation permission form, if the center provides transportation services;

(e) a six week record of medication permission forms, and a six week record of medications actually administered; and

(f) a six week record of incident, accident, and injury reports; and

(g) a six week record of eating, sleeping, and diaper changes as required in R381-100-23(12) R381-100-24(15).

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) copy of the current background screening card issued by the Department [~~approved initial "CBS/LIS Consent and Release of Liability for Child Care" form~~];

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R381-100-10(2), R381-100-20(5)(d), and R381-100-21(2).

R381-100-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, wires and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches,

or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(10) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(11) There shall be no trampolines on the premises that are accessible to any child in care.

(12) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(13) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

R381-100-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the center with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs himself or herself out of the center, a copy of the report shall be ~~sent~~~~mailed~~ to the parent on the day following the occurrence.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R381-100-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

(d) The provider shall ~~make available~~~~post~~ the current week's menu for parent review.

(2) The provider shall offer meals or snacks at least once every three hours.

(3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) The provider shall ensure that caregivers who serve food to children are aware of food allergies and sensitivities for the children

in their assigned group, and that children are not served the food or drink they have an allergy or sensitivity to.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

R381-100-18. Napping.

(1) The center shall provide children with a daily opportunity for rest or sleep in an environment that provides subdued lighting, a low noise level, and freedom from distractions.

(2) Scheduled nap times shall not exceed two hours daily.

(3) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.

(4) Mats and mattresses used for napping shall have a smooth, waterproof surface.

(5) The provider shall maintain sleeping equipment in good repair.

(6) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.

(7) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.

(8) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.

(9) A sheet and blanket or acceptable alternative shall be ~~used by~~ made available to each child during nap time. These items shall be:

(a) clearly assigned to one child;

(b) stored separately from other children's when not in use; and,

(c) laundered as needed, but at least once a week, and prior to use by another child.

(10) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.

(11) Cots and mats may not block exits.

R381-100-24. Infant and Toddler Care.

If the center cares for infants or toddlers, the following applies:

(1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present in the group.

(2) Infants and toddlers shall not use outdoor play areas at the same time as older children unless there are 8 or fewer children present in the group.

(3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(4) The provider shall clean and sanitize high chair trays prior to each use.

(5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(6) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

- (a) labeled with the child's name;
- (b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;
- (c) kept refrigerated if needed; and
- (d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.
- (7) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.
- (8) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.
- (9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.
- (10) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.
- (11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.
- (12) Cribs must:
- (a) have tight fitting mattresses;
- (b) have slats spaced no more than 2-3/8 inches apart;
- (c) have at least 20 inches from the top of the mattress to the top of the crib rail; ~~and~~
- (d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails[-]; and
- (e) meet CPSC crib standards.
- (13) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.
- (14) Each infant and toddler shall follow their own pattern of sleeping and eating.
- (15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the child's name, the food and beverages eaten, and the times the child slept.
- (16) Walkers with wheels are prohibited.
- (17) Infants and toddlers shall not have access to objects made of styrofoam.
- (18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.
- (19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.
- (20) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.
- (21) Mobile infants and toddlers shall have freedom of movement in a safe area.
- (22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.
- (23) All toys used by infants and toddlers shall be cleaned and sanitized:
- (a) weekly;

- (b) after being put in a child's mouth before another child plays with it; and
- (c) after being contaminated by body fluids.

KEY: child care facilities, child care, child care centers

Date of Enactment or Last Substantive Amendment: [~~May 1,~~] 2015

Authorizing, and Implemented or Interpreted Law: 26-39-203(1)

(a)

Health, Family Health and Preparedness, Child Care Licensing **R430-50** Residential Certificate Child Care

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39897

FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are mostly to clarify rules to facilitate compliance.

SUMMARY OF THE RULE OR CHANGE: This minor rule changes include needed definitions, clarification of some terms, and the deletion of some no longer required processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Since these are minor changes to the rule, the Department does not anticipate any cost or savings as a result of this change.

◆ **LOCAL GOVERNMENTS:** Since the proposed changes are mostly clarification to the current rule, the Department does not anticipate any new costs or savings to child care programs operated by state agencies.

◆ **SMALL BUSINESSES:** Almost all family child cares are small businesses. Since the proposed changes are mostly clarification to the current rule, the Department does not anticipate any new costs or savings to child care small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this rule will not change any of the requirements for family child care programs, the Department does not anticipate any new costs or savings to entities or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Because this rule will not change any of the requirements for family child care programs, the Department does not anticipate any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
This amendment has no fiscal impact on business in that it does not include any additional requirements for providers.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
CHILD CARE LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R430. Health, Family Health and Preparedness, Child Care Licensing.

R430-50. Residential Certificate Child Care.

R430-50-2. Definitions.

- (1) "Body fluid" means blood, urine, feces, vomit, mucus, and saliva.
- (2) "Certificate holder" means the person holding a Department of Health child care certificate.
- (3) "Department" means the Utah Department of Health.
- (4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.
- (5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.
- (6) "Inaccessible to children" means:
 - (a) locked, such as in a locked room, cupboard or drawer;
 - (b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;
 - (c) behind a properly secured child safety gate;
 - (d) located in a cupboard or on a shelf more than 36 inches above the floor; or
 - (e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.
- (7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(10) "Parent" means the parent or legal guardian of a child in care.

(11) "Physical abuse" means causing non-accidental physical harm to a child.

(12) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(13) "Provider" means the certificate holder or a substitute.

(14) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(15) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(16) "School age" means [~~kindergarten and older age children~~] children ages five through twelve.

(17) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(18) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(19) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(20) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(21) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(22) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(23) "Substitute" means a person who assumes the certificate holder's duties under this rule when the certificate holder is not present. This includes emergency substitutes.

(24) "Toddler" means a child aged 12 months but less than 24 months.

(25) "Unrelated children" means children who are not related children.

(26) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(27) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-50-6. Outdoor Environment.

If there is an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) For certificate holders who received an initial certificate after 1 September 2008, the outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the certificate holder's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;

(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;

(d) a drop-off of more than 5 feet on the certificate holder's property or within 50 yards of the certificate holder's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by children, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or in Subsections 12(9)(c)(i) or 12(10)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat whenever there are children in the outdoor play area.

(9) An outdoor source of drinking water, such as individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt.

(11) The certificate holder shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) The certificate holder shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-50-8. Administration.

(1) The certificate holder is responsible for all aspects of the operation and management of the child care program.

(2) The certificate holder shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The certificate holder shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The certificate holder shall take all reasonable measures to protect the safety of each child in care. The certificate holder shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the certificate holder or a substitute with authority to act on behalf of the certificate holder shall be present whenever there is a child in care.

(6) Each week, the certificate holder shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The certificate holder shall inform the parents of each child in care and the Department of any changes to the certificate holder's telephone number within 48 hours of the change.

~~(8) [The certificate holder shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The certificate holder shall also mail or fax a written report to the Department within five days of the incident.]~~The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(9) The certificate holder shall train and supervise all substitutes to:

(a) ensure their compliance with this rule;

(b) ensure they meet the needs of the children in care as specified in this rule; and

(c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-50-9. Records.

(1) The certificate holder shall maintain on-site for review by the Department during any inspection the following general records:

(a) current animal vaccination records as required in R430-50-22(1)(b);

(b) a six week record of child attendance, as required in R430-50-13(3);

(c) a current local health department kitchen inspection;

(d) an initial local fire department clearance for all areas of the home being used for care; and

(e) ~~[approved initial "CBS/LIS Consent and Release of Liability for Child Care" form]~~ copy of the current background screening card issued by the Department for all providers, volunteers, and each person age 12 and older who resides in the certificate holder's home;

~~[(f) if the certificate holder has been certified for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal; and~~

~~—(g) if the certificate holder has been certified for more than a year, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal.]~~

(2) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vi) child health information, as required in R430-50-14(7); and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-50-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care; and

(d) a six week record of medication permission forms, and a six week record of medications actually administered, as specified in R430-50-17(3) and R430-50-17(5)(f), if medications are administered to any child in care.

(3) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for the certificate holder and each non-emergency substitute:

(a) orientation training documentation for all non-emergency substitutes as required in R430-50-7(5);

(b) annual training documentation for the past two years as required in R430-50-7(6)(a); and

(c) current first aid and CPR certification, as required in R430-50-10(2) and R430-50-20(3)(d).

(4) The certificate holder shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-50-7(5).

(5) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

R430-50-11. Supervision and Ratios.

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider; or

(ii) by in person observation of each sleeping infant at least once every 15 minutes; ~~[or~~

~~—(iii) by using a Department-approved infant sleep monitoring device.]~~

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

(a) the certificate holder has prior written permission from the child's parent for the child's participation; and

(b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed number of children in care at any one time is eight children, including no more than two children under the age of two. The number of children in care includes the providers' own children under the age of four.

(5) The total number of children in care may be further limited based on square footage, as found in Subsection R430-50-4(5) through (7).

R430-50-12. Injury Prevention.

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, ~~e-cigarettes, e-juice, e-liquids~~, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The certificate holder shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the certificate holder shall maintain the pool in a safe manner;

(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

R430-50-24. Infant and Toddler Care.

If the certificate holder cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The certificate holder shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The certificate holder shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The certificate holder shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The certificate holder shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the certificate holder has written permission from the infant's parent.

(11) The certificate holder shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; ~~and~~

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child. And

(e) meet CPSC crib standards.

(12) The certificate holder shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The certificate holder shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The certificate holder shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The certificate holder shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The certificate holder shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The certificate holder shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The certificate holder shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The certificate holder shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The certificate holder shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

KEY: child care facilities, residential certification

Date of Enactment or Last Substantive Amendment: [September 1, 2013]2015

Notice of Continuation: May 29, 2013

Authorizing, and Implemented or Interpreted Law: 26-39

Health, Family Health and Preparedness, Child Care Licensing **R430-90** Licensed Family Child Care

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39895

FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are mostly to clarify rules to facilitate compliance.

SUMMARY OF THE RULE OR CHANGE: This minor rule change includes needed definitions, clarification of some terms, and the deletion of some no longer required processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Since these are minor changes to the rule, the Department does not anticipate any cost or savings as a result of this change.

◆ **LOCAL GOVERNMENTS:** Since the proposed changes are mostly clarification to the current rule, the Department does

not anticipate any new costs or savings to child care programs operated by state agencies.

♦ **SMALL BUSINESSES:** Almost all family child cares are small businesses. Since the proposed changes are mostly clarification to the current rule, the Department does not anticipate any new costs or savings to child care small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this rule will not change any of the requirements for family child care programs, the Department does not anticipate any new costs or savings to entities or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule will not change any of the requirements for family child care programs, the Department does not anticipate any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment has no fiscal impact on business in that it does not include any additional requirements for providers.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
CHILD CARE LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R430. Health, Family Health and Preparedness, Child Care Licensing.

R430-90. Licensed Family Child Care.

R430-90-2. Definitions.

- (1) "Body fluid" means blood, urine, feces, vomit, mucus, or saliva.
- (2) "Caregiver" means a person in addition to the licensee or substitute, including an assistant caregiver, who provides direct care to a child in care.
- (3) "Department" means the Utah Department of Health.
- (4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating,

humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

- (a) locked, such as in a locked room, cupboard or drawer;
- (b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;
- (c) behind a properly secured child safety gate;
- (d) located in a cupboard or on a shelf more than 36 inches above the floor; or
- (e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Licensee" means the person holding a Department of Health child care license.

(10) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(11) "Parent" means the parent or legal guardian of a child in care.

(12) "Physical abuse" means causing non-accidental physical harm to a child.

(13) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(14) "Provider" means the licensee, a substitute, a caregiver, or an assistant caregiver.

(15) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(16) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(17) "School age" means ~~[kindergarten and older age children]~~ children ages five through twelve.

(18) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(19) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(20) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(21) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

- (a) a sandbox;
- (b) a stationary circular tricycle;
- (c) a sensory table; or
- (d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(22) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example,

bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(23) "Substitute" means a person who assumes either the licensee's or a caregiver's duties under this rule when the licensee or caregiver is not present. This includes emergency substitutes.

(24) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(25) "Toddler" means a child aged 12 months but less than 24 months.

(26) "Unrelated children" means children who are not related children.

(27) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(28) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-90-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the licensee's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the licensee's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the licensee's property or within 50 yards of the licensee's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the licensee's property or within 100 yards of the licensee's property line;

(c) dangerous machinery, such as farm equipment, on the licensee's property or within 50 yards of the licensee's property line;

(d) a drop-off of more than five feet on the licensee's property or within 50 yards of the licensee's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by a child in care, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or Subsections 12(10)(c)(i) or 12(11)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat whenever there are children in the outdoor play area.

(9) An outdoor source of drinking water, such as individually labeled water bottles or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt, and shall have a 3' use zone that is free of hard surfaces. The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.

(11) The licensee shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on or within the use zone of any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) There shall be no tripping hazards, such as concrete footings, tree stumps, exposed tree roots, or rocks within the use zone of any piece of stationary play equipment.

(16) The licensee shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-90-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the child care program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The licensee shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The licensee shall take all reasonable measures to protect the safety of each child in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the licensee or a substitute with authority to act on behalf of the licensee shall be present whenever there is a child in care.

(6) Each week, the licensee shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The licensee shall inform the parents of each child in care and the Department of any changes to the licensee's telephone number within 48 hours of the change.

(8) ~~The licensee shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The licensee shall also mail or fax a written report to the Department within five days of the incident. The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was~~

part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(9) The licensee shall establish, and shall ensure that all providers follow, written policies and procedures for the health and safety of each child in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of each child at all times, including when he or she is sleeping, outdoors, and during off-site activities;

(b) procedures to account for each child's attendance and whereabouts;

(c) the licensee's policy and practices regarding sick children, and whether they are allowed to be in care;

(d) recognizing early signs of illness and determining when there is a need for exclusion from care;

(e) discipline of children, including behavioral expectations of children and discipline methods used;

(f) transportation to and from off-site activities, or to and from home, if the licensee offers these services; and

(g) if the program offers transportation to or from school, policies addressing:

(i) how long a child will be unattended by a provider before school starts and after school lets out;

(ii) what steps will be taken if a child fails to meet the vehicle; and

(iii) how and when parents will be notified of delays or problems with transportation to and from school.

(10) The licensee shall ensure that the written policies and procedures are available for review by parents and the Department during business hours.

(11) The licensee shall train and supervise all caregivers and substitutes to:

(a) ensure their compliance with this rule;

(b) ensure they meet the needs of the children in care as specified in this rule; and

(c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-90-9. Records.

(1) The licensee shall maintain on-site for review by the Department during any inspection the following general records:

(a) documentation of the previous 12 months of quarterly fire drills and annual disaster drills as specified in R430-90-10(9) and R430-90-10(11);

(b) current animal vaccination records as required in R430-90-22(2)(b);

(c) a six week record of child attendance as required in R430-90-13(3);

(d) a current local health department kitchen inspection;

(e) an initial local fire department clearance for all areas of the home being used for care; and

(f) ~~[approved initial "CBS/LIS Consent and Release of Liability for Child Care" form]~~ copy of the current background screening card issued by the Department for all providers, volunteers, and each person age 12 and older who resides in the licensee's home;

~~[(g) if the licensee has been licensed for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older~~

~~who resided in the home of the licensee at any time since the last license renewal; and~~

~~— (h) if the licensee has been licensed for more than a year, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal.]~~

(2) The licensee shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vi) child health information, as required in R430-90-14(7); and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-90-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care;

(d) a six week record of medication permission forms, and a six week record of medications actually administered as specified in R430-90-17(4) and R430-90-17(6)(f), if medications are administered to any child in care; and

(e) a six week record of incident, accident, and injury reports.

(3) The licensee shall maintain on-site for review by the Department during any inspection the following records for the licensee and each non-emergency substitute and caregiver:

(a) orientation training documentation for all non-emergency substitutes and caregivers as required in R430-90-7(8);

(b) annual training documentation for the past two years, for the licensee and all non-emergency substitutes and caregivers, as required in R430-90-7(9)(a); and

(c) current first aid and CPR certification, as required in R430-90-10(2), R430-90-20(3)(d), and R430-90-21(2).

(4) The licensee shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-90-7(8).

(5) The licensee shall ensure that information in any child's file is not released without written parental permission.

R430-90-11. Supervision and Ratios.

(1) The licensee or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and there is a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider; or

(ii) by in person observation of each sleeping infant at least once every 15 minutes; ~~or~~

~~(iii) by using a Department-approved infant sleep monitoring device.]~~

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The licensee may permit a child to participate in supervised out of the home activities without the licensee if:

(a) the licensee has prior written permission from the child's parent for the child's participation; and

(b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed capacity for a licensed family child care facility is 16 children, including providers' own children under age four.

(5) The licensee shall maintain a provider to child ratio of one provider for up to eight children in care, and two providers for nine to sixteen children in care.

(a) Children in care include the providers' own children under the age of four.

(b) Providers who are included in the provider to child ratio must meet all of the requirements of this rule.

(6) There shall be no more than four children under the age of two in care with two providers; and no more than two children under the age of two in care with one provider, except that if there are six or fewer children in care, there may be up to three children under the age of two in care.

(7) The total number of children in care may be further limited based on square footage, as found in Subsections R430-90-4(7) through (9).

(8) The licensee shall not exceed the maximum group sizes found in Table 1 and Table 2.

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R430-90-12. Injury Prevention.

(1) The licensee shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The licensee shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, ~~e-cigarettes, e-juice, e-liquids~~, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The licensee shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the licensee shall maintain the pool in a safe manner;

(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

R430-90-24. Infant and Toddler Care.

If the licensee accepts infants or toddlers for care, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The licensee shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The licensee shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The licensee shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The licensee shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the licensee has written permission from the infant's parent.

(11) The licensee shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; ~~and~~

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child; ~~and~~

(e) meet CPSC crib standards.

(12) The licensee shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The licensee shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The licensee shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The licensee shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The licensee shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The licensee shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The licensee shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The licensee shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The licensee shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth before another child uses it; and
- (c) after being contaminated by any body fluid.

KEY: child care facilities, licensed family child care
Date of Enactment or Last Substantive Amendment: [September 1, 2013] 2015
Notice of Continuation: May 29, 2013
Authorizing, and Implemented or Interpreted Law: 26-39

**Human Resource Management,
 Administration
 R477-7
 Leave**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39886
 FILED: 10/27/2015**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update current provisions related to the "Long Term Disability" section (Section R477-7-17) of the rule.

SUMMARY OF THE RULE OR CHANGE: This change updates the "Long Term Disability" section (Section R477-7-17) to include a monthly medical stipend, consistent with new PEHP guidelines.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 49-20-15

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2016

AUTHORIZED BY: Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.
 R477-7. Leave.
 R477-7-16. Workers Compensation Leave.**

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iii) employee has been absent from work for four months in a 24 month period;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, ~~[and] the employee [elects to continue health insurance coverage, the employee shall be responsible to pay health insurance.] shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked~~ pursuant to R477-7-17~~[(1)(b)(i)]~~(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position after four months cumulative leave in a 24 month period, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) An employee who has applied for the Long Term Disability Program (LTD) may be granted up to four months

cumulative leave in a 24 month period as the result of health conditions, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position.

(a) After four months of cumulative leave in a 24 month period, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(2) An employee determined eligible for Long Term Disability benefits shall be eligible ~~[for health insurance benefits]~~ to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked or the last day of FMLA leave.

~~[(a) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.]~~

(3) Upon approval of the LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(4) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(5) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(6) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

(7) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

KEY: holidays, leave benefits, vacations

Date of Enactment or Last Substantive Amendment: ~~[July 1,]~~ 2015

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14

**Human Services, Child and Family
Services
R512-100
In-Home Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39905

FILED: 11/02/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: This rule change is intended to make the rule technically correct with current practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-201 and Section 62A-4a-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.

◆ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

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

HUMAN SERVICES

CHILD AND FAMILY SERVICES

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-100. In-Home Services.

R512-100-1. Purpose and Authority.

(1) The purpose of In-Home Services is to ~~provide services to allow children at risk to remain safely in their own home, and provide services to facilitate the return home of children who have been placed in the custody of the Division of Child and Family Services (Child and Family Services).~~ enhance a parent's capacity to safely care for their child in their home and to safely reduce the need for out-of-home care in Utah. In-Home Services include front-end services that help prevent removal and allow a child to remain at home with their parent or caregiver. It includes cases where a child is placed with a non-custodial parent or relatives who have custody and guardianship of the child. It also includes services for when a child returns home from out-of-home care and there are continuing services with Child and Family Services and court oversight.

(2) In-Home Services are ~~designed to maintain children safely in their homes by helping families alleviate crises. Child and Family Services provides assistance for developing skills and educational training in the family home and for connecting the family to community services and resources to meet the family's needs.~~ a set of evidence-based services, strategies, and tools that support the safety, permanency, and well-being of a child and the strengthening of their family.

(3) The key components of In-Home Services interventions include:

(a) Case management based on Practice Model skills of engaging, teaming, assessing, planning, and intervening,

(b) [Skills development and family education;]Assessing and addressing safety and risk issues to help stabilize the family, providing purposeful home visits and a private conversation with the child,

(c) [Counseling/therapy;]The application of an evidence-based assessment to identify child and family needs and protective factors early in the case, guiding caseworkers to better target the individual needs of the family with services, and informing the development of the Child and Family Plan, and

(d) [Home visits;]Direct services and interventions that help the family make needed changes in addition to linking the family to evidence-based services and community resources.

~~[(e) Private conversation with one or more of the children if the children have been substantiated as a victim of abuse or neglect.]~~

(4) Pursuant to Sections 62A-4a-105, 62A-4a-201, and 62A-4a-202, Child and Family Services is authorized to provide In-Home Services.

~~[(4)](5) This rule is authorized by Section 62A-4a-102.~~

R512-100-2. Definitions.

~~[(1) "Child and Family Assessment" defines the child and family's strengths and needs and provides the framework from which to access appropriate services, evaluate progress toward goals, and adjust plans and interventions accordingly.]~~

~~[(2)](1) "Child and Family Plan" is a written document that is developed by the Child and Family Team based on the assessment of the child and family's strengths and needs. The Child and Family Plan will guide and enable [which will enable them to work toward their goals;]the family to make the changes that are necessary to meet their child's need for safety, permanency, and well-being.~~

(2) "Child and Family Services" means the Division of Child and Family Services.

(3) "Child and Family Team" is ~~[a group that meets as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons;]the family's identified informal supports and the service providers working with the family.~~

(4) "Utah Family and Children Engagement Tool (UFACET)" is an assessment tool used to identify child and family needs and guide addressing those needs with services in the Child and Family Plan.

R512-100-3. Qualifications.

(1) In-Home Services may be provided to families under the following conditions:

~~[(a) A specific threat of harm to the child is present or is likely to be present and without intervention the protective capacities of the caregiver cannot safely manage the threat of harm.~~

~~[(b) Abuse or neglect has occurred but the child is able to remain safely in the home.~~

~~[(c) A child who is being reunited with their family and has been in the temporary custody of Child and Family Services and/or an out-of-home placement with a kinship caregiver.~~

~~[(d) An adoptive placement may be at risk of disruption or dissolution and services are needed to maintain the child in the adoptive home.]~~

~~[(a) A child has experienced abuse or neglect but can remain safely in the home with a safety plan.~~

~~[(b) A child is placed with a non-custodial parent or relatives who have custody and guardianship of the child.~~

~~[(c) A child is returned home from out-of-home care.~~

~~[(d) An adoptive placement is at risk of disruption and intensive services are needed to maintain the child in the adoptive home.~~

~~[(e) When reunification is likely within 14 days and intensive support is needed in conjunction with a current out-of-home care caseworker to prepare for and facilitate the reunification.~~

(2) A family may not ~~[be accepted]qualify~~ for In-Home Services under the following conditions:

(a) A family has the ability to access resources, supports, and services on their own~~[-], and~~

~~[(b) [There are no specific threats of harm to the child that are not managed by the protective capacities of the family.]There is minimal risk of abuse/neglect to the child, and~~

~~[(c) The family requires no ongoing monitoring by Child and Family Services.~~

(3) In-Home Services may be voluntary or court ordered. A petition may be filed for court-ordered protective supervision of the family.

~~[(a) Voluntary services are preferred over court ordered services.~~

~~[(b) A petition may be filed for court-ordered protective supervision of the family.]~~

(4) In-Home Services are available in all geographic regions of the state.

R512-100-5. Service Delivery.

(1) Child and Family Team:

~~[(With the family's assistance, a Child and Family Team shall be established for each family receiving In-Home Services.]The caseworker will engage the child and family to assemble a Child and Family Team. A Child and Family Team includes informal supports identified by the family in addition to the service providers who are or will be working with the family. The Child and Family Team meets regularly and assesses the strengths and needs of the child and family and plans for the child's safety, permanency, and well-being. Teaming occurs through ongoing information sharing and collaboration.~~

~~[(b) At a minimum, the Child and Family Team shall assist with assessment, Child and Family Plan development, and selection of permanency goals; oversee progress toward completion of the Child and Family Plan; and provide input into adaptations to the Child and Family Plan.]~~

(2) ~~[Child and Family Assessment:]Assessing:~~

~~[(A written assessment that evaluates the child and family's strengths and underlying needs is completed for each family working with Child and Family Services.]The purpose of assessing is to inform the Child and Family Team so that they know what they need to know to do what they need to do. Assessing is a sequential process of gathering information about the family's strengths and needs, analyzing the information, drawing conclusions, and acting on those conclusions by developing a plan to meet the identified needs.~~

These needs are met through the provision of effective interventions that help the family achieve enduring safety, permanency, and well-being. Assessing is an ongoing and evolving process throughout the case.

(3) ~~[Child and Family Plan:]~~ Planning:

(a) ~~[Based upon the Child and Family Assessment, each child and family receiving In-Home Services shall have a written Child and Family Plan in accordance with Section 62A-4a-205.]~~ A Child and Family Plan shall be developed for each family receiving In-Home Services in accordance with Section 62A-4a-205. The Child and Family Plan guides the provision of services/interventions and is tracked and adapted throughout the case.

(b) Members of the Child and Family Team, including the parents and the child, if age appropriate, shall assist in [creating]developing the Child and Family Plan.

(c) A copy of the completed Child and Family Plan shall be provided to the parent or guardian. If In-Home Services are court ordered, a copy of the Child and Family Plan will be provided to the court, Assistant Attorney General, Guardian ad Litem, and legal counsel for the parent or guardian.

(4) Permanency Goals:

(a) All children receiving In-Home Services shall have a primary permanency goal and, if appropriate, a concurrent permanency goal identified by the Child and Family Team.

(b) For court-ordered In-Home Services, both primary and concurrent permanency goals, when applicable, shall be submitted to the court for approval.

(5) Duration of Services:

(a) ~~[In-Home Services shall continue until the identified threats of harm have been managed by decreasing the child vulnerabilities and/or increasing the protective capacities of the family, or when the child can no longer safely remain in the home.]~~ For court-ordered services, the caseworker will continue to work with the family until the circumstances that brought the family to the attention of Child and Family Services are remedied and a ruling is made by the assigned judge to terminate Child and Family Services oversight.

(b) For voluntary services, the Child and Family Team assesses and determines when to end services with the family. This decision is staffed with the caseworker's supervisor.

KEY: child welfare

Date of Enactment or Last Substantive Amendment: [~~October 13, 2010~~]2015

Notice of Continuation: April 8, 2013

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-201; 62A-4a-202

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

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39860

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to define the continuum of substance use disorder services; clarify funding for medical detoxification programs; and adopt the American Society of Addiction Medicine (ASAM) Patient Placement Criteria to determine the level of care provided to all individuals served by programs provided by contracted with the Division or county local authorities. (DAR NOTE: The proposed repeal is of Rule R523-20 under DAR No. 39873 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule defines: 1) prevention; 2) substance use disorder treatment; 3) mental health services; and 4) recovery support services. This rule provides guidance on: 1) the funding of medical detoxification programs by the division; 2) the substance use disorder assessment of clients by contractors; and 3) placement decisions to be based on criteria developed by the American Society of Addiction Medicine.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule is replacing a rule that is being repealed, Rule R523-20. Changes made to this rule are primarily renumbering, additional definitions, and clarification of text that was already in place.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to the local government because this rule is replacing a rule that is being repealed, Rule R523-20. Changes made to this rule are primarily renumbering, additional definitions, and clarification of text that was already in place.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to the small businesses because this rule is replacing a rule that is being repealed, Rule R523-20. Changes made to this rule are primarily renumbering, additional definitions, and clarification of text that was already in place.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule is replacing a rule that is being repealed, Rule R523-20. Changes made to this rule are primarily renumbering, additional definitions, and clarification of text that was already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule is replacing a rule that being repealed, Rule R523-20. Changes made to this rule are primarily renumbering, additional definitions, and clarification of text that was already in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since this rule is replacing a repealed rule and changes made to this rule are primarily renumbering, additional definitions, and clarification of text that was already in place, there is no fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
 ♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-1. General Provisions.

R523-1-1. Authority.

This rule establishes procedures and standards for administration of substance use disorder and mental health services as granted by Section 62A-15-105.

R523-1-2. Purpose.

- (1) The purpose of this rule is to:
 (a) Define the continuum of substance use disorder services;
 (b) Clarify funding for Medical detoxification programs;
and
 (c) Adopt the American Society of Addiction Medicine (ASAM) Patient Placement Criteria to determine the level of care provided to all individuals served by programs provided by or contracted with the Division or county local authorities.

R523-1-3. Continuum of Services.

(1) Prevention means a proactive comprehensive approach to reduce risk factors and promote protective factors of substance use disorders and mental illness. The comprehensive approach is to

include services in universal, selective, and indicated settings across a broad array of activities, programs, and strategies.

(2) Substance Use Disorder Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned misuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing standards (Rule R501-2-5) as adopted by the Division of Substance Abuse and Mental Health, is maintained.

(3) Mental Health services means a broad array of activities directly or indirectly related to mental well-being and includes promotion of well-being, the prevention of mental disorders, and the treatment and rehabilitation of people affected by mental disorders.

(4) Recovery Support Services means those services or activities provided before, during or after completion of acute treatment services to enhance a person's ability to either attain or retain their recovery from either mental health or substance use disorders.

R523-1-4. Funding of Medical Detoxification Programs.

Medical detoxification programs shall not be funded by the Division on an ongoing basis.

R523-1-5. Use of Standard Criteria.

(1) All contractors and subcontractors shall conduct an assessment of each client to determine the degree of severity of any substance use disorder. This assessment shall evaluate the client's status in the following dimensions.

- (a) Risk of acute psychosis, intoxication/withdrawal;
 (b) Biomedical conditions or complications;
 (c) Emotional, Behavioral Cognitive Conditions;
 (d) Readiness to change;
 (e) Relapse, continued use or continued problem potential;
and

(f) Recovery environment.
 (2) The assessment shall include relevant information on the client's:

- (a) Substance use history, and any treatment history;
 (b) Legal status; and
 (c) Criminogenic Risk and needs.

(3) The placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the current placement criteria developed by the American Society of Addiction Medicine (ASAM).

(4) Documentation of the use of ASAM placement criteria must be included in each patient's record.

KEY: substance disorder, financing of programs, service continuum, assessment instruments

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-105

Human Services, Substance Abuse and Mental Health

R523-2

Local Mental Health Authorities and Local Substance Abuse Authorities

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39862

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide guidance on the practices of the local mental health authorities, local substance abuse authorities, and the Utah State Hospital. (DAR NOTE: The proposed repeal is of Rule R523-4 under DAR No. 39861 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on: 1) the priorities for treatment services; 2) the rights of individuals participating in services; 3) a process for Local Mental Health Authorities (LMHAs) and Local Substance Abuse Authorities (LSAAs) to set policies on fees for service; 4) the LMHA/LSAA program standards; 5) the formula for allocation of funding; 6) the allocation of Utah State Hospital (Hospital) beds to LMHAs; 7) the admission to the Hospital and coordination of care; 8) the determining the proper LMHA under special situations; 9) the transfer planning between LMHAs from the Hospital; 10) conflict resolution processes; and 11) prohibited items and devices on the grounds of public mental health facilities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 17-50-501 and Section 17-50-502 and Section 62A-15-103 and Section 62A-15-105 and Section 62A-15-108 and Section 62A-15-201 et seq. and Section 62A-15-611 and Section 62A-15-612 and Section 62A-15-902 and Section 76-10-523.5 and Section 76-8-311.1 and Section 76-8-311.3 and Subsection 17-43-301(4)(a)(x) and Subsection 62A-15-602(9) and Subsection 62A-15-610(2)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-4, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to the local governments because this rule replaces a repealed rule, R523-4, that was repealed in order to clarify guidance, correct typographical errors,

remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule replaces a repealed rule, R523-4, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-4, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no aggregate anticipated cost or savings to the compliance costs for affected persons because this rule replaces a repealed rule, R523-4, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule, R523-4, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

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

HUMAN SERVICES

SUBSTANCE ABUSE AND MENTAL HEALTH

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.**R523-2. Local Mental Health Authorities and Local Substance Abuse Authorities.****R523-2-1. Authority.**

This rule is promulgated under authority granted to the Division of Substance Abuse and Mental Health (Division) by Subsections 62A-15-105, 62A-15-108(1), 62A-15-611(2)(a), 62A-15-612(2) and 62A-15-902(2)(c).

R523-2-2. Purpose.

- (1) The purpose of this rule is to provide:
- (a) Guidance on the priorities for treatment services
 - (b) Guidance on the rights of individuals participating in services.
 - (c) A process for Local Mental Health Authorities (LMHAs) and Local Substance Abuse Authorities (LSAAs) to set policies on fees for service.
 - (d) Guidance on LMHA/LSAA program standards.
 - (e) Guidance on the formula for allocation of funding.
 - (f) Guidance on allocation of Utah State Hospital (Hospital) beds to LMHAs.
 - (g) Guidance on admission to the Hospital and coordination of care.
 - (h) Guidance on determining the proper LMHA under special situations.
 - (i) Guidance on transfer planning between LMHAs from the Hospital.
 - (j) Guidance on conflict resolution.
 - (k) Guidance on prohibited items and devices on the grounds of public mental health facilities.

R523-2-3. Priorities for Treatment Services.

(1) Programs providing substance use disorder and mental health treatment services with public funds (federal, state, and local match) shall comply with the priorities listed below. The Division shall regularly seek and receive input from the Utah Behavioral Health Planning and Advisory Council on priorities for services.

(2) Mental Health services provided with public funds (federal, state, and local match) shall provide services based on immediacy of need and severity of the mental illness. Priority may also be given to under-served age groups as appropriately demonstrated through needs studies.

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

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

- (i) Children, youth, and adults with severe mental illness;
- (ii) Children, youth, and adults with acute mental illness; and
- (iii) Children, youth and adults who are receiving services from other divisions within the Department of Human Services.

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

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

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

(3) Substance use disorder treatment services provided with public funds (federal, state, and local match) shall provide priority admission to the following populations (in order of priority):

- (a) Pregnant females who use drugs by injection
- (b) Pregnant females who use substances
- (c) Other persons who use drugs by injection;
- (d) Substance using females with dependent children and their families, including women who are attempting to regain custody of their children; and
- (e) All other clients with a substance use disorder, regardless of gender or route of use.

R523-2-4. Rights of Individuals Participating in Services.

(1) All service providers contracted with the Division and County Local Authority programs shall disclose the following information in writing to all individuals participating in treatment services:

- (a) Rights and responsibilities to participate in the development of the treatment or other type of service plan.
 - (b) Right to be involved in selection of their primary therapist.
 - (c) Right to access their individual treatment records.
 - (d) Right to informed consent regarding medications.
 - (e) Rights regarding medication-assisted treatment.
 - (f) Disclosure of all program fees and personal financial responsibility.
 - (g) Information on grievance procedures that includes all necessary information to file a formal grievance.
 - (h) Service provider's commitment to treat individuals with substance use disorders and mental health consumers with dignity and individuality in a positive, supportive and empowering manner.
- (2) This information shall be shared with the individual participating in treatment services at the time of intake and a signed copy made part of their individual file. The Division shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.
- (3) If an individual is impaired or temporarily incapable of understanding the initial information, it shall be shared again when the individual is able to understand the information and give informed consent. This shall also be made part of their individual file.

R523-2-5. LMHA/LSAA Fee Policy.

(1) Each LMHA/LSAA shall require all programs that receive federal and state funds from the Division and provide services to clients to establish a policy to set and collect fees.

(a) Each fee policy shall include:

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

- (ii) A provision that clients who have received an assessment and require mental health or substance use disorder services shall not be denied services based on the lack of ability to pay.

(b) Any adjustments to the assessed fee shall follow the procedures approved by the LMHA/LSAA.

(2) The governing body of each LMHA/LSAA shall approve the fee policy and shall set a usual and customary rate for services rendered.

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

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

(a) The usual and customary rate established by the LMHA/LSAA, or

(b) A negotiated contracted cost of services rendered to clients.

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

(6) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the LMHA/LSAA.

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

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

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

R523-2-6. LMHA/LSAA Program Standards.

(1) The Division establishes minimum standards for LMHA/LSAA programs.

(a) Each LMHA/LSAA program shall have the appropriate current license issued by the Office of Licensing, Department of Human Services and any other required licenses.

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

(i) Be consistent with the Division Directives for the Division of Substance Abuse and Mental Health;

(ii) Designate the projected use of state and federal contracted dollars and the 20% county match dollars; and

(iii) Define the LMHA/LSAA's priorities for service and the population to be served.

(c) Each LMHA shall provide or arrange for the provision of services within the following continuum of care:

(i) Inpatient care and services (hospitalization);

(ii) Residential care and services;

(iii) Day treatment and psycho-social rehabilitation;

(iv) Outpatient care and services;

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

(vi) Psychotropic medication management;

(vii) Case management services;

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

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

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

(d) Each LSAA shall provide or arrange for the provision of services within the following continuum of care:

(i) Universal prevention;

(ii) Selective prevention;

(iii) Indicated prevention including the educational series approved by the Division in R523-11 for individuals convicted of driving under the influence; and

(iv) Treatment services prescribed by Division contract and Directives; and

(v) Recovery Support Services.

(e) Each LMHA/LSAA shall participate in a yearly on-site evaluation conducted by the Division.

(f) The LMHA/LSAA shall be responsible for monitoring and evaluating all subcontracts to ensure:

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

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

(g) The LMHA/LSAA shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-2-7. Formula for Allocation of Funding.

(1) The Division establishes by rule, a formula for the annual allocation of funds to LSAAs and a formula for the annual allocation of funds to the LMHAs.

(a) The formulas do not apply to funds used by the Division for administration, statewide services consistent with the requirements of Section 62A-15-201 et seq. for discretionary grants awarded to the Division, funds appropriated for drug court, the Drug Offender Reform Act and the Medicaid Match funds.

(b) Funds used by the Division for administration shall not exceed 5% of the total annual legislative appropriation to the Division excluding the appropriation for the Utah State Hospital.

(c) The funding formulas shall be applied annually to state and federal block grant funds appropriated by the legislature to the Division and are intended for the annual equitable distribution of these funds to the state's LMHAs and LSAAs.

(d) Excluding discretionary grants, DORA, Drug Court, and other programs for which Utah Code establishes the funding process, funds used by the Division for statewide substance use disorder services consistent with requirements of Section 62A-15-201 et seq. shall not exceed 15% of the total annual substance abuse legislative appropriation to the Division.

(e) Population data used in the formulas shall be updated annually using the most current data available from the Utah Department of Health's website, Public Health Indicator Based Information System (IBIS).

(f) New funding and/or decreases in funding shall be processed and distributed through the funding formulas.

(g) Each LMHA/LSAA shall provide funding equal to at least 20% of the state general fund appropriation that it receives to fund services described in that LMHA/LSAA's annual plan.

(i) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

(ii) If a LMHA/LSAA is unable to provide the required matching funds, the LMHA/LSAA shall be allocated the amount the LMHA/LSAA can match.

(iii) Excess funds may be allocated on a one-time basis to LMHAs/LSAAs with the ability to provide matching funds.

(iv) If no LMHA/LSAA can provide the required match, the Division may use the funds to purchase statewide services.

(h) Changes in funding related to the adoption of new formulas in 2014 shall be phased in over a five year period beginning in State Fiscal year 2015.

(2) Funding for mental health shall be allocated as follows:

(a) The Division shall allocate 5% of mental health funds to the 24 smallest counties ranked by population as a rural differential. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(b) The Division shall allocate all remaining mental health funds to the LMHAs on a per capita basis, according to the most current population data available from IBIS.

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

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

(a) The Division shall allocate a total of \$2,390,643 in funds used for prior cost of living increases and funds previously contracted with statewide residential providers to the LMHAs/LSAs in an amount equal to the 2014 allocation.

(b) The Division shall allocate 5% of the remaining funds to the 24 smallest counties ranked by population. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(c) Sixty percent of the remaining funds shall be allocated to each county based on the incidence and prevalence of substance use disorders based on the following:

(i) The percent of adults estimated to be binge drinkers as reported by the Behavioral Risk Factor Surveillance System (BRFSS).

(ii) The percent of adults estimated to be chronic drinkers as reported by BRFSS.

(iii) The percent of youth reporting alcohol use within the past 30 days by the most current Student Health and Risk Protection Survey (SHARP).

(iv) The percent of youth estimated to be binge drinkers by the most current SHARP.

(v) The percent of youth needing drug treatment as reported by the most current SHARP.

(d) Forty percent of the remaining funds shall be allocated to LSAs on a per capita basis, according to the most current population data available from the IBIS.

R523-2-8. Formula for Allocation of Medicaid Match Funds.

(1) Medicaid match funds appropriated to the Division shall be allocated to the LMHAs/LSAs using the methodology described below:

(a) The Division shall obtain the following data from the Utah Department of Health:

(i) The number of eligible Medicaid recipients in each county for each month of the previous state fiscal year hereinafter called Medicaid Member Months; and:

(ii) The actuarially established rates for each county.

(b) The Division shall calculate County Need for Medicaid match funds by multiplying each County's Total Medicaid Member Months by their corresponding actuarial rates for the most current 12 month period.

(c) The Division shall sum all County Need to determine the State Medicaid Match Need.

(d) The percent of total Medicaid match funds for each local authority shall be determined by dividing the sum of County Need by the State Medicaid Match Need.

(e) Local authorities that do not participate in the Medicaid prospective payment-capitation plan shall receive the amount of funds they would have received if the funds had been distributed using state population.

(f) Each LMHA and LSAA shall provide funding from tax revenues assessed by the County legislative body equal to at least 20% of the Medicaid match funds.

(i) If a LMHA/LSAA is unable to provide the required matching funds, the LMHA/LSAA shall be allocated the amount the LMHA/LSAA can match.

(ii) Excess funds may be allocated on a one-time basis to local authorities with the ability to provide matching funds.

R523-2-9. Distribution of Fee-On-Fine (DUI) Funds.

(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the LSAs based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-4-4. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the LSAA's governing board to send the funds to the local service provider.

R523-2-10. Allocation of Utah State Hospital Adult Bed Days to Local Mental Health Authorities.

(1) The Division herein establishes a formula to allocate to LMHAs the adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a).

(2) The formula established provides for allocation based on:

(a) The percentage of the state's adult population located within a LMHA catchment area; and

(b) A differential to compensate for the additional demand for hospital beds in LMHA catchment areas that are located within urban areas.

(3) The Division hereby establishes a formula to determine adult bed allocation:

(a) The most recent available population estimates are obtained from IBIS.

(b) The total adult population figures for the State are identified. Adult means age 18 and over.

(c) Adult population numbers are identified for each county.

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

(i) The total number of adult beds available at the Utah State Hospital is determined.

(ii) 4.8% is subtracted from the total number of beds available for adults to be allocated as an urban differential.

(e) The total number of available adult beds minus the urban differential is multiplied by the county's percentage of the state's total adult population to determine the number of allocated beds for each county.

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

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

(h) At least one adult bed is allocated to each LMHA.

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

(5) Applying the formula:

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

(b) The Division is responsible to calculate the adult bed allocation.

(c) Each LMHA will be notified of changes in adult bed allocation.

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

(7) A LMHA may sell or loan its allocation of adult beds to another LMHA.

R523-2-11. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

(1) The Division establishes a formula to allocate to LMHAs the pediatric beds at the Utah State Hospital.

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

(3) Each LMHA shall be allocated at least one pediatric bed.

(4) The formula to determine pediatric bed allocation:

(a) The most recent available population estimates are obtained from IBIS.

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

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

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

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

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

(6) Applying the formula:

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

(b) Each LMHA shall be notified of changes in pediatric bed allocation.

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

(8) A LMHA may sell or loan its allocation of pediatric beds to another LMHA.

R523-2-12. Admission to the Hospital and Coordination of Care.

(1) The Division has oversight of the Utah State Hospital as per Subsection 62A-15-103(2)(b)(ii) and shall oversee the Continuity of Care Committees for adult and children/youth patients (when the patient is a child or youth, then patient also refers to the parent and/or legal guardian), as it pertains to Admissions, Coordination of Care, Discharges and Transfers between LMHAs of patients to and from the Utah State Hospital (Hospital). The Division shall conduct monthly Continuity of Care Committee meetings, unless the time for the meetings is postponed or canceled for good cause.

(2) Each LMHA shall assign a liaison to the Hospital as the identified representative of the LMHA.

(a) The Liaison shall coordinate patient needs for admission to the Hospital and shall complete the Hospital Pre-admission packet, which includes identifying community discharge and treatment options prior to admission. Any individual or family member independently requesting voluntary Hospital admission shall be referred to the appropriate LMHA geographical area in which the individual currently resides.

(b) LMHA liaisons are responsible to participate in the coordination of care at the Hospital. This includes participation in clinical staffing, at least monthly. The liaisons and Hospital staff are required to participate in order to coordinate patient treatment, discuss the progress of assigned patients and meet with patients and Hospital staff jointly to formulate patient care.

(c) Patients admitted to the Forensic units are under the jurisdiction of the criminal court system; if the need arises the LMHA liaison will participate in community discharge placements, and follow up care.

(d) Hospital staff and liaison shall coordinate discharge plans. As there are multiple factors inherent in determining "readiness for discharge," this decision will be made on an individual basis, with input from the patient, the Hospital, the LMHA and the Division as necessary. Outplacement funds shall be used to resolve financial barriers that delay or complicate patients discharge. Patient's preferences and feedback regarding discharge placements shall be considered. For adult patients the LMHA liaison is required to arrange discharge placement and follow up care once the patient is ready for discharge as indicated by the Division's REDI program (Readiness, Evaluation and Discharge Implementation). The Hospital and LMHAs are required to use the REDI program. REDI information will be

distributed monthly to the Hospital, and the LMHAs to track progress toward discharge. The philosophy of the Hospital is to provide short-term inpatient care for the purpose of stabilization with the goal of transition to a less restrictive level of care as soon as possible. If the Hospital and/or the LMHA determine that the patient is ready for discharge and the coordination of the placement is not occurring, the Hospital and/or liaison is required to notify the Division within five business days.

(e) The Liaison shall follow the Hospital's policies on admission, treatment, discharge, and transfers of all Hospital patients.

R523-2-13. Determining the Proper LMHA Under Special Situations.

(1) In the following special situations, the proper LMHA will be determined as follows:

(a) Homeless: Individuals who are homeless and in need of Hospital admission shall be the responsibility of the LMHA in which the individual came to the attention of local emergency services. If from out of state, the individual shall be referred to the LMHA where the individual was identified as mentally ill and in need of services.

(b) Children and Adolescent Patients: Children and Adolescents in state custody shall be referred to the LMHA in which they resided prior to their custody being changed to the Division of Child and Family Services or the Division of Juvenile Justice Services.

(c) Forensic Patients: When a forensic patient, placed at the Hospital pursuant to criminal adjudication as set forth in Utah Code Section 62A-15-902, and is determined to meet criteria for civil commitment, the patient shall be committed to the LMHA where the patient resided prior to his/her arrest.

(d) Prison Transfers: Utah State Prison inmates who are transferred to the Hospital Forensic Unit and subsequently civilly committed become the responsibility of the LMHA where the person resided prior to incarceration.

(e) Developmental Center Transfers: Individuals placed at the Utah State Developmental Center (USDC), who are transferred to the Hospital for treatment of a mental illness are the responsibility of the LMHA of their last community residence (excluding foster and group home placements less than one year in duration). If the individual was admitted to the USDC as a child, the residence of the custodial parent(s) at the time of admission to USDC shall be used to determine the responsible LMHA. The LMHA is responsible for treatment and discharge planning during the course of the individual's Hospital stay.

R523-2-14. Transfer Planning Between LMHAs From the Hospital.

(1) When a Hospital patient or the patient's legal guardian desires to relocate to a new geographical area, the patient's LMHA liaison (the liaison responsible for the civil bed in which the patient currently resides), shall notify the receiving LMHA regarding the desire of the patient. It is the referring liaison's responsibility to discuss the matter with the patient and with the receiving LMHA and work toward discharge.

(2) The referring and receiving LMHA liaison shall discuss the transfer and shall provide information as needed.

(3) Once the receiving LMHA accepts the referral, the receiving LMHA shall proceed with Hospital patient discharge planning. During the time period between the referral to the receiving

LMHA and Hospital discharge, the Hospital patient shall continue to be assessed against the bed allocation of the referring LMHA. The receiving LMHA is expected to work toward discharge.

(4) The LMHAs may negotiate an agreement (LMHA to LMHA) if the patient returns to the Hospital, the patient returns to the referring LMHA bed. The agreement is not to exceed one year, whereby the referring LMHA agrees the patient's bed shall be assessed against the bed allocation of the referring LMHA. The agreement specifies the role of each LMHA and who is responsible for providing needed services and payment for those services. Any such agreement shall be made in writing. If a LMHA to LMHA agreement cannot be reached, then the conflict resolution process as outlined in R523-2-15 below shall be followed.

(5) At the conclusion of the negotiated period, the receiving LMHA shall assume all responsibility for the full continuum of mental health services, including Hospital care.

R523-2-15. Conflict Resolution.

(1) The Division will work to resolve conflicts between the Hospital and a LMHA, as well as conflicts between LMHAs.

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

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

(ii) If the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the LMHA and USH clinical director shall meet and attempt to resolve the conflict;

(iii) If a resolution cannot be reached, the LMHA director and the superintendent of the USH shall meet and attempt to resolve the conflict;

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

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

R523-2-16. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-15-602 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with a LMHA and/or the Division are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 17-43-301(4)

(a)(x); 17-50-501; 17-50-502; 62A-15-103; 62A-15-105; 62A-15-

108; 62A-15-201 et seq.; 62A-15-602(9); 62A-15-610(2)(a); 62A-15-611; 62A-15-612; 62A-15-902; 76-8-311.1; 76-8-311.3; 76-10-523.5

**Human Services, Substance Abuse
and Mental Health
R523-2
Adult Peer Support Specialist Training
and Certification**

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 39865
FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to: 1) the division's reorganization of its rules; and 2) the edits needed to be made to the text of the rule. It will be replaced with a new rule that is renumbered and edited. (DAR NOTE: The proposed new rule is Rule R523-5 under DAR No. 39866 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule prescribed standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an Adult Peer Support Specialist. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-402

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This rule will be replaced by a new rule, R523-5, that revises, condenses, and clarifies guidance provided.
- ◆ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule, R523-5, that revises, condenses, and clarifies guidance provided.
- ◆ SMALL BUSINESSES: None--This rule will be replaced by a new rule, R523-5, that revises, condenses, and clarifies guidance provided.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule, R523-5, that revises, condenses, and clarifies guidance provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-5, that revises, condenses, and clarifies guidance provided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to businesses because this rule

will be replaced by a new rule, R523-5, that revises, condenses, and clarifies guidance provided.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
~~[R523-2. Adult Peer Support Specialist Training and Certification.~~

R523-2-1. Purpose, Authority and Intent.

~~(1) Purpose. These rules prescribe standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an Adult Peer Support Specialist.~~

~~(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Section 62A-15-402.~~

~~(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists.~~

R523-2-2. Definitions:

~~(1) "Adult Peer Support Specialist (PSS)" is an individual who has successfully completed an approved Adult Peer Support Specialist Training Program and for ongoing certification has met the requirements outlined in paragraph R523-2-9.~~

~~(2) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.~~

~~(3) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.~~

~~(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.~~

~~(5) "Division" means the Division of Substance Abuse and Mental Health.~~

~~_____ (6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as an "Adult Peer Support Specialist Training Program".~~

~~_____ (7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.~~

~~_____ (8) "Recovery" is a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.~~

~~R523-2-3. Certification Requirements for Peer Support Specialist Training Programs.~~

~~_____ (1) An application for Program Certification will require that the program provide, among other things:~~

~~_____ (a) Qualifications of individuals who will be providing the training;~~

~~_____ (b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-2-5 for a PSS.~~

~~_____ (c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.~~

~~_____ (d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.~~

~~_____ (e) An agreement to comply with all applicable local, state and federal laws and regulations.~~

~~_____ (2) The Division Director has the authority to grant exceptions to any of the certification requirements.~~

~~R523-2-4. Division Oversight of Program.~~

~~_____ (1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.~~

~~_____ (2) The PSS Training Program also agrees to allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.~~

~~_____ (3) The Division will establish an application process to review and approve applicants for the PSS Training Program. This process will:~~

~~_____ (a) Develop and publish an application to be a PSS.~~

~~_____ (b) Solicit input from stakeholders, Peer Support Specialists and other individuals on the review process.~~

~~_____ (c) Establish further criteria for acceptance into the PSS program as needed.~~

~~R523-2-5. Curriculum requirements for Adult Peer Support Specialist Training Programs.~~

~~_____ (1) This curriculum must provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the PSS's lived experience and recovery in order to assist in the identified client's recovery:~~

~~_____ (a) Etiology of mental illness and substance use disorders;~~

~~_____ (b) The stages of recovery from mental illness and substance use disorders;~~

~~_____ (c) The relapse prevention process;~~

~~_____ (d) Combating negative self-talk;~~

~~_____ (e) The Role of Peer Support in the Recovery Process and Using Your Recovery Story as a Recovery Tool;~~

~~_____ (f) Dynamics of Change;~~

~~_____ (g) Strengthening the Peer Specialist's recovery;~~

~~_____ (h) Ethics of Peer Support;~~

~~_____ (i) Professional relationships, boundaries and limits;~~

~~_____ (j) Scope of Peer Support;~~

~~_____ (k) Cultural Competence: Self-Awareness -- Cultural Identity;~~

~~_____ (l) Stigma and Labeling;~~

~~_____ (m) Community resources to support individuals in recovery;~~

~~_____ (n) Assisting individuals in Accomplishing Recovery Goals;~~

~~_____ (o) Coach, Mentor, and Role model recovery;~~

~~_____ (p) Assist in identification of natural, formal and informal supports;~~

~~_____ (q) Stress Management Techniques;~~

~~_____ (r) Assisting individuals in reaching educational and vocational goals;~~

~~_____ (s) Crisis prevention; and~~

~~_____ (t) Assist with physical health and wellness.~~

~~_____ (2) The curriculum must be strength based and include:~~

~~_____ (a) Active listening and communication skills; and~~

~~_____ (b) Basic motivational interviewing skills.~~

~~_____ (3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.~~

~~R523-2-7. Requirements to Become an Adult Peer Support Specialist.~~

~~_____ (1) Be an individual who participated in substance abuse or mental health treatment services who is now in sustained recovery, or~~

~~_____ (2) Be an individual in recovery from substance use or mental health disorders through means other than treatment services who is now in sustained recovery.~~

~~_____ (3) Be at least 18 years of age.~~

~~_____ (4) Complete the application process with the Division.~~

~~_____ (5) Pass the qualification exam with score of 70% or above.~~

~~_____ (6) Have attended and successfully completed a Division approved Peer Support Specialist training program and have a valid certificate from that training.~~

~~R523-2-9. Requirements to remain qualified as an Adult Peer Support Specialist.~~

~~_____ (1) Complete at least twenty (20) hours of continuing education per year including two (2) hours of ethics training and six (6) hours pertaining specifically to Peer Support services.~~

~~_____ (2) Provide proof to the Division of completing the required training on an annual basis.~~

~~KEY: peer support specialist, PSS program, certification of programs, substance use disorder~~

~~Date of Enactment or Last Substantive Amendment: December 27, 2012~~

~~Authorizing, and Implemented or Interpreted Law: 62A-15-402]~~

**Human Services, Substance Abuse
and Mental Health**
R523-3
**Screening, Assessment, Education and
Treatment Standards for Court-referred
Youth Under the Age of 21**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39863

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by H.B. 348 passed during the 2015 General Session. This rule prescribes the standards for substance use disorder screening, assessment, treatment, and required educational series for court-referred youth (hereinafter youth) under the age of 21 found in violation of: 1) Section 41-6a-502 driving under the influence of alcohol, drugs or a combination of both; 2) Section 53-3-231 person under 21 may not operate a vehicle or motorboat with detectable alcohol in body; 3) Section 41-6a-517 driving with any measurable controlled substance in the body; 4) Section 41-6a-520 blood alcohol test refusal; 5) Section 32B-4-409 unlawful purchase, possession, consumption of alcohol; 6) Section 32B-4-410 unlawful admittance or attempt to gain admittance; 7) Section 76-9-701 intoxication; and/or 8) Section 32B-4-411 unlawful use of proof of age. Under the age of 18 is in violation of: 1) Section 58-37-8; 2) Title 58, Chapter 37a, Utah Drug Paraphernalia Act; and 3) Title 58, Chapter 37b, Imitation Controlled Substances Act.

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on the following: 1) standards for criminogenic risk screening and assessment; 2) standards for substance use disorder and mental health screenings; 3) standards for substance use disorder assessments; 4) standards for educational series; 5) standards for substance use disorder treatment; 6) documentation standards for substance use disorder treatment; 7) certification procedures for educational series and treatment programs; 8) corrective action; 9) suspension and revocation; 10) procedure for denial, suspension, or revocation; and 11) posting of certified programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Part 2 and Section 32B-4-409 and Section 32B-4-410 and Section 32B-4-411 and Section 41-6a-501 and Section 41-6a-502 and Section 41-6a-517 and Section 41-6a-520 and Section 53-3-231 and Section 58-37-8 and Section 63G-4-203 and Section 76-9-701 and Subsection 62A-15-105(6) and Title 58, Chapter 37a and Title 58, Chapter 37b

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule will have no impact on the state budget. Funds will be contracted primarily to the county governments. The Division of Substance Abuse and Mental Health (DSAMH) will provide oversight within existing resources. The juvenile court already screens juveniles for criminogenic need. Some state programs will need to meet the standards outlined in this rule. This may result in fewer individuals served. However, this rule does not mandate or require additional funds for treatment services.

◆ **LOCAL GOVERNMENTS:** Treatment funds are contracted by DSAMH to county governments. Funds do not create an entitlement for individuals involved in the justice system but strengthen the existing safety net. Meeting the standards may require higher expenditures per client. However, services will only be provided within appropriation.

◆ **SMALL BUSINESSES:** Small business will not be impacted by this rule. Private treatment providers may choose to change business practice to meet new standards. If they choose to change business practice to meet the new standards, this will likely result in additional revenue from the criminal justice system.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** DSAMH does not anticipate increased costs to this class of persons. If persons in this class that are private treatment providers choose to change business practice to meet the new standards, this will likely result in additional revenue from the criminal justice system.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DSAMH does not anticipate that there will be a compliance cost for affected persons because these services will be provided within the funding of the legislative appropriation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Human Services does not anticipate a fiscal impact on businesses because these programs will be provided within the funding allocations provided by the legislative appropriations.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-3. Screening, Assessment, Education and Treatment Standards for Court-referred Youth Under the Age of 21.

R523-3-1. Authority.

This rule is authorized by Subsection 62A-15-105(6) requiring the Division of Substance Abuse and Mental Health (Division) to provide form and content of screening, assessment, education and treatment as defined in Section 41-6a-501.

R523-3-2. Purpose.

(1) This rule prescribes the standards for substance use disorder screening, assessment, treatment, and required educational series for court-referred youth (hereinafter youth):

- (a) Under the age of 21 found in violation of:
 - (i) Section 41-6a-502 driving under the influence of alcohol, drugs or a combination of both;
 - (ii) Section 53-3-231 person under 21 may not operate a vehicle or motorboat with detectable alcohol in body;
 - (iii) Section 41-6a-517 driving with any measurable controlled substance in the body;
 - (iv) Section 41-6a-520 blood alcohol test refusal;
 - (v) Section 32B-4-409 unlawful purchase, possession, consumption of alcohol;
 - (vi) Section 32B-4-410 unlawful admittance or attempt to gain admittance;
 - (vii) Section 76-9-701 intoxication; and/or
 - (viii) Section 32B-4-411 unlawful use of proof of age; or
- (b) Under the age of 18 is in violation of:
 - (i) Section 58-37-8;
 - (ii) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
 - (iii) Title 58, Chapter 37b, Imitation Controlled Substances Act;

R523-3-3. Definitions.

(1) "Assessment" means an in-depth clinical interview with a licensed mental health therapist used to determine if a youth is in need of:

- (a) Substance use disorder treatment that is obtained at a substance use disorder program;
- (b) An educational series; or
- (c) A combination of Subsection R523-3-3(1)(a) and Subsection R523-3-3(1)(b).

(2) "Educational series" means a court-ordered and evidence-based instructional series for youth with low criminogenic risk obtained at a substance use disorder program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105 designed to prevent the onset of substance use and/or mental health disorders and reduce criminogenic risk.

(3) "Criminogenic Risk" means youth characteristics that are directly related to researched causation of delinquency.

(4) "Criminogenic Need" means dynamic or changeable attributes of youth that are directly linked to delinquency that should be targeted to develop a comprehensive treatment plan.

(5) "Level of Care" means the intensity of either substance use disorder services needed as defined by the American Society of Addiction Medicine (ASAM) or the array of services needed to address a youth's mental health issues.

(6) "Recovery" means a process of change through which youth improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(7) "Recovery Support" means services or activities provided before, during or after completion of acute treatment services to enhance a youth's ability to either attain or retain their recovery from either mental health or substance use disorders.

(8) "Screening" means a preliminary appraisal of a youth used to determine:

- (a) Criminogenic risk, and;
- (b) If the youth is in need of further assessment.
- (9) "Youth" for purposes of this rule are defined as any person under the age of twenty-one years of age.

R523-3-4. Standards for Criminogenic Risk Screening and Assessment.

(1) Prior to referral to a certified educational series or treatment program, all youth shall be given a brief, validated, risk and needs screen in the preliminary stages of involvement with the justice system to determine whether the youth is of low, moderate, or high risk to re-offend.

(a) For youth under the age of eighteen (18) years of age, the screening instrument to be used shall be the most current version of the Pre-Screen Risk Assessment (PSRA) or other instrument currently approved by the Juvenile Court.

(b) For youth between the ages of eighteen (18) and twenty-one (21), the screening instrument to be used shall be the most current version of the Level of Service Inventory-Revised: Screening Version (LSI-R:SV).

(2) The screen shall collect information about behaviors and characteristics known to predict re-offending including delinquency history, social history, and attitudes/behaviors.

(3) If the screen indicates a high likelihood of re-offending, the youth shall be given an in-depth assessment of criminogenic risk and need.

(a) For youth under the age of eighteen (18) years of age, the assessment instrument to be used shall be the most current version of the Protective and Risk Assessment (PRA).

(b) For youth between the ages of eighteen (18) and twenty-one (21), the assessment instrument to be used if a criminogenic risk assessment is necessary shall be the Level of Service/Risk, Need, Responsivity (LS/RNR).

(4) The criminogenic assessment shall examine a wide variety of factors related to the youth's strengths and challenges including: delinquency history, school, employment, relationships, environment, current living arrangements, alcohol and drugs, mental health, attitudes and behaviors, and skills.

(5) The criminogenic assessment shall also identify protective factors that are related to the reduced likelihood of re-offending and risk factors that are related to the increased likelihood of re-offending.

R523-3-5. Standards for Substance Use and Co-occurring Mental Health Disorder Screenings.

(1) A court may order a Substance Use and Mental Health Disorder Screening for a youth upon a first violation of the offenses in Section R523-3-2.

(2) A court shall order a Substance Use and Mental Health Disorder Screening for second or subsequent violation of the offenses in Section R523-3-2.

(3) Youth shall be screened using an instrument(s) that has been evaluated and found reliable and valid by the scientific community to determine whether youth are in need of comprehensive assessment.

(4) Screenings shall be:

(a) Conducted by a person that has completed all training recommended by the developer of the specific instrument being used; and

(b) Trauma-informed developmentally appropriate, short, simple, and easy to administer and interpret by a wide variety of professionals who work with youth;

(5) The youth shall be referred for an assessment if the screening identifies a potential substance use and/or mental health disorder.

(6) Screenings shall not be used to determine diagnosis.

(7) Examples of validated substance use disorder screening instruments for youth include but are not limited to the Substance Abuse Subtle Screening Inventory (SASSI); the Problem Oriented Screening Instrument for Teenagers (POSIT), the Personal Experience Screening Questionnaire (PESQ) and the CRAFFT Screening Tool recommended by the American Academy of Pediatrics' Committee on Substance Abuse.

R523-3-6. Standards for Substance Use Disorder and Co-occurring Mental Health Assessments.

(1) Assessments shall be conducted by a licensed mental health therapist using a standardized instrument(s) and process that has been evaluated by the scientific community and determined to be reliable and valid for the purpose of assessing youth.

(2) Assessments shall identify: relevant information to the youth's use of substances that will assist in determining the need for placement in services based on the ASAM Dimensions as outlined in the ASAM Criteria, 2013 Edition, or most current ASAMH criteria.

(3) Assessments shall focus on the youth's substance use severity, mental health status, legal problems, physical condition, educational functioning, living situation and the criminogenic risk factors that predict the likelihood of re-offense.

(4) Based on the screening and the assessment, the assessor shall recommend needed services, and supervision requirements that address the youth's clinical and criminogenic needs.

(5) Examples of validated substance use disorder assessment instruments for youth include but are not limited to: The Global Appraisal of Youth Needs (GAIN), Teen Addiction Severity Index (T-ASI) and the Personal Experience Inventory (PEI).

R523-3-7. Standards for Educational Series.

(1) Applicants wishing to certify an intervention, program, activity or curriculum for approval to fulfill the legal requirements of court-referred youth as set forth in Section 41-6a-501 shall submit an application to the Division for review that shows the ability to:

(a) Meet the requirements for listing on Utah's registry of evidence-based programs identified in Section R523-9;

(b) Maintain records documenting the location, fees collected, date(s) of service, attendance and course completion or failure to complete;

(c) Serve youth in settings that are segregated from adults;

(d) Serve low risk youth and high risk youth in separate groups.

(e) Provide accurate information about the harms of underage drinking and drug use and be designed to promote compliance with Utah laws.

(4) All individuals working with youth shall complete a background check that meets the standards for working with vulnerable populations. This must be completed before engaging in or participating in youth programs or activities under this rule.

R523-3-8. Standards for Substance Use Disorder Treatment.

(1) All programs shall maintain the appropriate license from the Department of Human Services, Office of Licensing for the services being provided.

(2) All programs shall submit Treatment Episode Data (TEDs) admission and discharge data as outlined in the Division's most current Division Directives.

(3) Programs shall evaluate all participants for criminogenic risk and need, and deliver services that target the specific risk and needs identified.

(4) Youth with high risk and youth with low risk to reoffend shall be treated separately.

(5) Programs shall coordinate and communicate with the Juvenile Court, Juvenile Justice Services, the State Office of Education, and other necessary agencies on a regular and consistent basis as agreed.

(6) Programs shall provide multi-dimensional services that target the validated criminogenic risk factors. (7) Treatment participation and length shall be of sufficient dosage/duration to affect stable behavioral change.

(7) The appropriateness of treatment intensity, duration and modality shall be adjusted based on medical necessity using the current ASAM or comparable mental health criteria and ongoing assessment process.

(a) The Division shall develop performance metrics that evaluate the ability of programs to engage and retain individuals in the appropriate intensity and modality of service.

(8) Treatment programs shall ensure that public funds are the payor of last resort.

(a) Treatment programs shall coordinate or refer youth and families to the Department of Workforce Services or healthcare navigators for assistance with eligibility for public or private insurance plans.

(b) Treatment programs may negotiate and assess usual and customary fees to youth.

(9) Youth treatment programs shall:

(a) Assess youth for substance use and mental health disorders and motivation to seek treatment using validated instruments and protocols;

(b) Identify barriers to treatment participation and develop specific strategies to address each barrier as early as possible;

(c) Diagnose, treat or ensure treatment for co-occurring mental illness;

- (d) Provide comprehensive treatment services;
- (e) As appropriate and with consent, involve families in the treatment process;
- (f) Use developmentally appropriate and informed treatments;
- (g) Have qualified, and licensed staff trained to work with youth with substance use disorders and mental illness;
- (h) Recognize gender, cultural, and youth differences;
- (i) Provide or link to ongoing chronic disease management, recovery supports, monitoring and aftercare services;
- (j) Ensure that low risk youth and high risk youth are treated in separate groups;
- (k) Use specific evidence-based or evidence-informed clinical interventions, strategies, and procedures to achieve specific treatment goals and objectives;
- (l) Youth testing positive for drugs or alcohol shall not be denied entry or removed from treatment from a program solely for positive drug tests.
- (m) Programs shall comply with all Division Directives for Drug testing as published in the annual DSAMH Division Directives.
- (n) Conduct program evaluation and ongoing process improvement activities;
- (o) Agree to allow the Division to perform qualitative review and audits;
- (p) Agree to allow program information to be published in the Division's Online Guide to Adolescent Substance Use Disorder Treatment programs in Utah;
- (q) Complete and submit the National Survey on Substance Abuse Treatment Services (N-SATTS); and
- (r) All individuals working with youth shall complete a background check that meets the standards for working with vulnerable populations prior to beginning employment.

R523-3-9. Documentation Standards for Substance Use Disorder and Co-occurring Treatment.

- (1) A complete and accurate record of all clinical services shall be kept for each youth served that contains the following information:
 - (a) Any and all screenings and assessments completed;
 - (b) Any and all consent forms or required disclosures;
 - (c) A comprehensive treatment plan;
 - (d) Progress notes;
 - (e) Continuing recovery recommendations upon discharge;and
 - (f) Record reflects cultural and gender specificity in treatment.
- (2) The youth record is maintained in a manner so as to protect confidentiality and comply with 42 CFR Part 2 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) documentation/privacy standards. The record is organized, clear, complete, current and legible.
 - (a) Consent forms for any release of information shall be found in the file.
 - (b) Consent forms shall be complete, and contain a statement that consent is subject to revocation, shall be signed and dated by the patient, and guardian if the patient is a minor.
 - (c) Each file shall contain a signed and witnessed Acknowledgement of Receipt of Privacy statement.

- (3) The youth record shall contain documentation of the initial assessment/engagement session.
 - (a) The assessment/engagement identifies presenting problem(s), youth goals and identifies the initial diagnosis.
 - (b) The assessment/engagement includes a statement of the youth's presenting problem(s) and:
 - (i) Identification and documentation of acute psychosis, intoxication/withdrawal relevant to the presenting problem;
 - (ii) Identification and documentation of biomedical conditions and complications relevant to the presenting problem;
 - (iii) Identification and documentation of emotional, behavioral, cognitive conditions and or complications relevant to the youth's current situation and the presenting problem;
 - (iv) Identification, evaluation and documentation of the readiness to change relevant to the presenting problem;
 - (v) Identification and documentation of relapse, or continued problem potential relevant to the presenting problem;
 - (vi) Identification and documentation of the youth's recovery environment relative to the presenting problem;
 - (vii) Identification of recovery support services needed relevant to the presenting problem;
 - (viii) An assessment/engagement summary includes recommendations for level of care and intensity of services needed; and
 - (ix) Documentation of an assignment for the youth to complete for their next session.
- (4) Any and all screenings and assessments shall be documented in the youth file.
 - (a) The assessment information is current and includes the justification for the assessed level of care and array of services, as well as justification if the level of care is being substituted.
 - (b) Assessment dimensions are current and are updated as new information is received, new goals are identified and youth progresses or regresses.
 - (c) Assessment process is ongoing and changes to assessment information are reflected throughout the record.
 - (d) Level of care and intensity of services are supported by ongoing assessment information, or difference is clinically justified.
 - (e) Assessment shall be signed and include the title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.
- (5) A treatment plan that contains the following:
 - (a) Specific individualized long range goals;
 - (b) Behaviorally measurable short-term objectives that support long range goals;
 - (c) Evidence of youth's participation in development of the plan;
 - (d) Evidence that the plan is based on the youth's goals and other needs identified in the screening and assessments;
 - (e) Objectives that are measurable, achievable within a specified time frame and reflect developmentally appropriate activities that support progress towards achievement of youth goals;
 - (f) Substance use disorder treatment plans should be based on the six ASAM Patient Placement Dimensions and shall address critical areas identified in each dimension. Mental Health Recovery Plans shall be organized in a similar manner.
 - (g) Interventions designed to help the patient complete the objectives; and

(h) Signature and title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

(6) The youth file shall include documentation of the youth's status throughout the youth record including:

(a) Changes in types, schedule, duration and frequency of therapeutic interventions to facilitate youth progress as well as changes in youth objectives and goals;

(b) Each contact shall be documented in a timely manner;

(c) Progress notes shall be kept that identify the date, duration and type of intervention;

(d) Progress notes shall document progress or lack of progress on the youth's goals as well as the clinician's assessment of the youth's changes in behaviors, attitudes and beliefs;

(e) Progress notes shall reflect clinician's assessment of the effectiveness of the therapeutic interventions and plans for future interventions;

(f) Notes shall be legible and signed by a qualified staff indicating appropriate credentials;

(g) No-shows, cancellations or gaps in service such as vacation, incarceration, home visits shall be documented;

(h) Youth and group notes shall be specific and document progress towards achievement of the objectives identified in the treatment plan and as each objective is completed, identify a new objective;

(i) Lack of progress toward treatment/recovery plan goals and resulting adjustments to the recovery plan shall also be documented;

(j) Notes shall reflect behavioral changes as well as changes in attitudes and beliefs;

(k) Other group activities such as psychoeducation, life skills, case management, and recreation may be summarized and dated with the date the activity occurred;

(l) Recovery support services are documented to the extent required for clinical continuity and in order to meet financial requirements;

(m) Changes in assessment information, current level of care and treatment plan; and

(n) Upon discharge, recommendations for ongoing services include the extent to which established goals and objectives were achieved, what ongoing services are recommended, and a description of the youth's recovery support plan.

R523-3-10. Certification Procedures for Educational Series and Treatment Programs.

(1) Programs seeking first-time approval or re-approval shall make application to the Division at least 60 days prior to delivering services.

(2) All application forms shall be reviewed by the Division.

(3) The Division shall determine if the application is complete and demonstrates compliance with this rule.

(4) The Division approves the application and determines the program has met all other requirements, the Division shall certify the program for a period of two years.

(5) The Division shall notify all applicants within 30 days of submission of an application, whether the application is:

(a) Approved,

(b) Denied; or

(c) Requires additional information.

(6) If an application for re-approval requires additional information, a previously certified program may continue to provide services for 30 days from the date of notification unless notified by the Department of Human Services to cease and desist.

R523-3-11. Corrective Action.

(1) The Division shall notify the Department of Human Services, Office of Licensing immediately if the Division becomes aware of an issue that may affect the imminent health, safety, or well-being of youth.

(2) When the Division becomes aware that a program is in violation of this rule but the violation does likely not affect the imminent health, safety, or well-being of youth, the Division shall:

(a) Identify in writing the specific areas in which the program is not in compliance, and;

(b) Send written notice to the program within 30 days after becoming aware of the violation.

(3) The program shall submit a written plan for achieving compliance within thirty (30) days of notification of noncompliance.

R523-3-12. Suspension and Revocation.

(1) The Division may suspend the approval of a program when a program fails to:

(a) Respond in writing to areas of noncompliance identified in writing by the Division within the thirty (30) days.

(b) Comply with the corrective action plan in its written response to the Division; or

(c) Allow the Division access to information or records necessary to determine the program's compliance under this rule.

(2) The Division may revoke approval if a program:

(a) Continues to provide the educational series or treatment services after suspension;

(b) Fails to comply with corrective action while under a suspension; or

(c) Commits a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

(3) The Division shall notify the Juvenile Court, the Division of Juvenile Justice Services, the State Office of Education, the Department of Human Services, Office of Licensing and county local authorities when a certification is suspended or revoked.

R523-3-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under this rule and intends to deny, suspend or revoke approval of a program, the Division shall notify the applicant or program of the action to be taken.

(2) A notice to suspend or revoke approval shall contain the reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(3) The program may request a meeting with the Director or designee of the Division within ten calendar days of receipt of notification.

(4) A request for a meeting for this purpose shall be in writing.

(5) Within ten days following the close of the meeting, the Division shall inform the program or applicant in writing of the decision of the Division Director or Designee.

R523-3-14. Posting of Certified Programs.

(1) The Division shall maintain a current list of certified educational series and treatment programs on its website.

(2) The list of Educational Series programs shall include the contact information for the program, the program's business location, information on the cost of services, the number of hours required to complete the educational series and a short description of the series.

(3) The list of treatment programs shall include the contact information for the programs, the program's business location, and information on the cost of services.

KEY: youth adolescent treatment standards, youth offender substance use screening or assessments, youth offender substance use education series, youth offender substance use treatments

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 32B-4-409; 32B-4-410; 32B-4-411; 41-6a-501; 41-6a-502; 41-6a-517; 41-6a-520; 53-3-231; 58-37-8; 58-37a; 58-37b; 62A-15-105(6); 76-9-701; 42CFR Part 2

Human Services, Substance Abuse
and Mental Health
R523-3
Child/Family Peer Support Specialist
Training and Certification

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39867

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of their rules. (DAR NOTE: The proposed new rule is Rule R523-6 under DAR No. 39868 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule prescribes standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become a Child/Family Peer Support Specialist. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-402

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--This rule will be replaced by a new rule, R523-6, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule, R523-6, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ SMALL BUSINESSES: None--This rule will be replaced by a new rule, R523-6, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule, R523-6, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-6, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses because this rule will be replaced by a new rule, R523-6, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

~~[R523-3. Child/Family Peer Support Specialist Training and Certification.~~

~~**R523-3-1. Purpose, Authority and Intent.**~~

~~(1) Purpose. These rules prescribe standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become a Child/Family Peer Support Specialist.~~

~~(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Section 62A-15-402.~~

~~(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that~~

have completed requisite training to work as substance use disorder and/or mental health peer support specialists.

R523-3-2. Definitions:

(1) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(3) Child/Family Peer Support Specialist is a "Family Resource Facilitator" (FRF) who is an individual who has successfully completed an approved Family Resource Facilitator Training Program and for ongoing certification has met the requirements outlined in paragraph R523-3-7.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as a "Family Resource Facilitator Training Program".

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

R523-3-3. Certification Requirements for PSS Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-3-5 for Family Resource Facilitator Training.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-3-4. Division Oversight of Program:

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The Family Resource Facilitator Training Program also agrees to allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the Family Resource Facilitator Training Program.

This process will:

(a) Develop and publish an application to be a Family Resource Facilitator Training Program.

(b) Solicit input from stakeholders, Family Resource Facilitators and other individuals on the review process.

(c) Establish further criteria for acceptance into the program as needed.

R523-3-5. Curriculum Requirements for Family Resource Facilitator Training Programs:

(1) This curriculum must provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the FRF's lived experience as a parent or caregiver of a youth with complex mental health and/or substance use needs in order to promote family and youth resiliency and assist in the identified client's recovery:

(a) Systems of Care

(i) Providing family driven, youth guided, culturally competent and community based services

(A) History of the family involvement movement

(ii) Wraparound and Wraparound process including:

(A) Strength, Needs and Cultural Discovery

(B) Assist in identification of natural, formal and informal supports

(C) Prioritize needs/goals and develop a plan of care

(D) Crisis Prevention

(E) Implement action steps and celebrate successes

(F) Transition Planning

(b) Family Resource Facilitator (FRF) model for strengthening families and building communities.

(i) FRF Roles

(A) Resource Coordination

(B) Family Education and Support

(C) Family Advocacy

(D) Wraparound to Fidelity

(ii) Training and supervision expectations

(c) Ethics of Peer Support

(d) Professional relationships, boundaries and limits

(e) Multi-agency coordination

(f) Family advocacy (individual and system change)

(g) Stigma and Labeling

(h) Assisting Individuals in Accomplishing Recovery Goals

(i) Coach, Mentor, and Role model recovery

(j) Stress Management Techniques

(k) Assist with reaching age appropriate educational and vocational goals; and

(l) Assist with physical health and wellness

(2) The curriculum must be strength based and include:

(a) Active listening and communication skills

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-3-6. Requirements to Become a Family Resource Facilitator.

(1) Be a parent of a child who has received services for a mental, emotional, behavioral or substance use disorder or an adult

~~who has an on-going and personal relationship with a family member who is a child who is receiving or has received services for a mental, emotional, behavioral or substance use disorder.~~

- ~~———— (2) Be at least 18 years of age.~~
~~———— (3) Have attended and successfully completed a Division approved Child, Youth and Family Peer Support Specialist training program and have a valid certificate from that training.~~
~~———— (4) Pass the qualification exam with a score of 80% or above.~~

~~**R523-3-7. Requirements to Remain Qualified as a Family Resource Facilitator:**~~

- ~~———— (1) FRF's are encouraged to advance toward additional levels of demonstrated competency and specialization achieved through continued training, mentoring and evaluation during an approved practicum.~~
~~———— (2) Complete at least twenty (20) hours of approved continuing education per year including two (2) hours of ethics training and six (6) hours pertaining specifically to Family Resource Facilitation.~~
~~———— (3) Provide proof to the Division of completing the required training on an annual basis.~~

~~**KEY: peer support specialist, family resource facilitator, certification of programs, mental health and substance use disorder**~~

~~**Date of Enactment or Last Substantive Amendment: December 27, 2012**~~

~~**Authorizing, and Implemented or Interpreted Law: 62A-15-402]**~~

Human Services, Substance Abuse and Mental Health

R523-4

Local Mental Health Authorities and Local Substance Abuse Authorities

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 39861
FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to: 1) the division's reorganization of its rules; and 2) the edits needed to be made to the text of the rule. It will be replaced with a new rule that is renumbered and edited. (DAR NOTE: The proposed new rule is Rule R523-2 under DAR No. 39862 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provided: 1) clarification of the relationship between the Division, the Local Mental Health Authorities (LMHAs) and the Local Substance Abuse Authorities (LSAAs); 2) guidance on the

formula for allocation of funding to the LMHAs and LSAAs; 3) a process for LMHAs and LSAAs to set policies on fees for service; 4) guidance on carryover from funds generated through collections; 5) guidance on priorities for treatment; 6) guidance on LMHA/LSAA written statements on consumer rights; 7) guidance in the use of data for evaluations, research and statistical analysis; 8) guidance on allocation of Utah State Hospital bed days to LMHAs; 9) guidance on LMHA/LSAA program standards; and 10) set maintenance of effort standards for local substance abuse authorities. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This rule will be replaced by a new rule, R523-2, that revises, condenses, and clarifies guidance provided.
- ◆ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule, R523-2, that revises, condenses, and clarifies guidance provided.
- ◆ SMALL BUSINESSES: None--This rule will be replaced by a new rule, R523-2, that revises, condenses, and clarifies guidance provided.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule, R523-2, that revises, condenses, and clarifies guidance provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-2, that revises, condenses, and clarifies guidance provided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since this rule will be replaced by a new rule, R523-2, there will be no fiscal impact on businesses.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

~~**[R523-4. Local Mental Health Authorities and Local Substance Abuse Authorities.**~~

~~**R523-4-1. Authority.**~~

~~This rule is promulgated under authority granted to the Division of Substance Abuse and Mental Health (Division) by Subsections 62A-15-105, 62A-15-108(1), 62A-15-611(2)(a), 62A-15-612(2) and 62A-15-902(2)(c).~~

~~**R523-4-2. Purpose.**~~

- ~~(1) The purpose of this rule is to provide:~~
- ~~(a) Clarification of the relationship between the Division, the Local Mental Health Authorities (LMHAs) and the Local Substance Abuse Authorities (LSAAs);~~
 - ~~(b) Guidance on the formula for allocation of funding to the LMHAs and LSAAs;~~
 - ~~(c) A process for LMHAs and LSAAs to set policies on fees for service;~~
 - ~~(d) Guidance on carryover from funds generated through collections;~~
 - ~~(e) Guidance on priorities for treatment;~~
 - ~~(f) Guidance on LMHA/LSAA written statements on consumer rights;~~
 - ~~(g) Guidance in the use of data for evaluations, research and statistical analysis;~~
 - ~~(h) Guidance on allocation of Utah State Hospital bed days to LMHAs;~~
 - ~~(i) Guidance on LMHA/LSAA program standards;~~
 - ~~(j) Set maintenance of effort standards for local substance abuse authorities;~~

~~**R523-4-3. Relationship Between the Division, Local Mental Health Authorities and Local Substance Abuse Authorities.**~~

- ~~(1) LMHAs and LSAAs are the "service designees" of the Division to provide comprehensive mental health services and substance abuse services as defined by state law pursuant to Sections 17-43-301 and 17-43-302 and any other applicable state law.~~
- ~~(2) When the Division requires other services outside the comprehensive range specified by law, it may provide LMHAs/LSAAs the first opportunity to accept or reject the service contract. If the LMHA/LSAA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA/LSAA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA/LSAA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA/LSAA.~~
- ~~(3) The Division has the responsibility and authority to monitor LMHA/LSAA contracts. Each mental health/substance abuse catchment area shall be visited at least once annually to monitor compliance. The LMHA/LSAA will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA/LSAA describing the findings from the site visit.~~

~~**R523-4-4. Admission to the Hospital and Coordination of Care.**~~

~~(1) The Division has oversight of the Utah State Hospital as per Subsection 62A-15-103(2)(b)(ii) and shall oversee the Continuity of Care Committees for adult and children/youth patients (when the patient is a child or youth, then patient also refers to the parent and/or legal guardian), as it pertains to Admissions, Coordination of Care, Discharges and Transfers between LMHAs of patients to and from the Utah State Hospital (Hospital). The Division shall conduct monthly Continuity of Care Committee meetings, unless the time for the meetings is postponed or canceled for good cause.~~

~~(2) Each LMHA shall assign a liaison to the Hospital as the identified representative of the LMHA.~~

~~(a) The Liaison will coordinate patient needs for admission to the Hospital and shall complete the Hospital Pre-admission packet, which includes identifying community discharge and treatment options prior to admission. Any individual or family member independently requesting voluntary Hospital admission shall be referred to the appropriate LMHA geographical area in which the individual currently resides.~~

~~(b) LMHA liaisons are responsible to participate in the coordination of care at the Hospital. This includes participation in clinical staffing, at least monthly. The liaisons and Hospital staff are required to participate in order to coordinate patient treatment, discuss the progress of assigned patients and meet with patients and Hospital staff jointly to formulate patient care.~~

~~(c) Patients admitted to the Forensic units are under the jurisdiction of the criminal court system; if the need arises the LMHA liaison will participate in community discharge placements, and follow up care.~~

~~(d) Hospital staff and liaison will coordinate discharge plans. As there are multiple factors inherent in determining "readiness for discharge," this decision will be made on an individual basis, with input from the patient, the Hospital, the LMHA and the Division as necessary. Outplacement funds shall be used to resolve financial barriers that delay or complicate patients discharge. Patient's preferences and feedback regarding discharge placements shall be considered. For adult patients the LMHA liaison is required to arrange discharge placement and follow up care once the patient is ready for discharge as indicated by the Division's REDI program (Readiness, Evaluation and Discharge Implementation). The Hospital and LMHAs are required to use the REDI program. REDI information will be distributed monthly to the Hospital, and the LMHAs to track progress toward discharge. The philosophy of the Hospital is to provide short-term inpatient care for the purpose of stabilization with the goal of transition to a less restrictive level of care as soon as possible. If the Hospital and/or the LMHA determine that the patient is ready for discharge and the coordination of the placement is not occurring the Hospital and/or liaison is required to notify the Division within five business days.~~

~~(e) The Liaison shall follow the Hospital's policies on admission, treatment, discharge, and transfers of all Hospital patients.~~

~~**R523-4-5. Determining the Proper LMHA Under Special Situations.**~~

~~(1) In the following special situations, the proper LMHA will be determined as follows:~~

~~(a) Homeless: Individuals who are homeless and in need of Hospital admission shall be the responsibility of the LMHA in which~~

the individual came to the attention of local emergency services. If from out of state, the individual shall be referred to the LMHA where the individual was identified as mentally ill and in need of services:

(b) ~~Children and Adolescent Patients: Children and Adolescents in state custody will be referred to the LMHA in which they resided prior to their custody being changed to the Division of Child and Family Services or the Division of Juvenile Justice Services~~

(c) ~~Forensic Patients: When a forensic patient, placed at the Hospital pursuant to criminal adjudication as set forth in Utah Code Section 62A-15-902, and is determined to meet criteria for civil commitment the patient shall be committed to LMHA where the patient resided prior to his/her arrest.~~

(d) ~~Prison Transfers: Utah State Prison inmates who are transferred to the Hospital Forensic Unit and subsequently civilly committed become the responsibility of the LMHA where the person resided prior to incarceration.~~

(e) ~~Developmental Center Transfers: Individuals placed at the Utah State Developmental Center (USDC), who are transferred to the Hospital for treatment of a mental illness are the responsibility of the LMHA of their last community residence (excluding foster and group home placements less than one year in duration). If the individual was admitted to the USDC as a child, the residence of the custodial parent(s) at the time of admission to USDC will be used to determine the responsible LMHA. The LMHA is responsible for treatment and discharge planning during the course of the individual's Hospital stay.~~

R523-4-6. Transfer Planning Between LMHAs From Hospital.

(1) ~~When a Hospital patient or the patient's legal guardian desires to relocate to a new geographical area, the patient's LMHA liaison (the liaison responsible for the civil bed in which the patient currently resides), will notify the receiving LMHA regarding the desire of the patient. It is the referring liaison's responsibility to discuss the matter with the patient and with the receiving LMHA and work toward discharge.~~

(2) ~~The referring and receiving LMHA liaison will discuss the transfer and will provide information as needed.~~

(3) ~~Once the receiving LMHA accepts the referral, the receiving LMHA will proceed with Hospital patient discharge planning. During the time period between the referral to the receiving LMHA and Hospital discharge, the Hospital patient will continue to be assessed against the bed allocation of the referring LMHA. The receiving LMHA is expected to work toward discharge.~~

(4) ~~The LMHAs may negotiate an agreement (Local Authority to Local Authority) agreement if the patient returns to the Hospital, the patient returns to the referring LMHA bed. The agreement is not to exceed one year, whereby the referring LMHA agrees the patient's bed will be assessed against the bed allocation of the referring LMHA. The agreement specifies the role of each LMHA and who is responsible for providing needed services and payment for those services. Any such agreement shall be made in writing. If a Local Authority to Local Authority agreement cannot be reached, then the conflict resolution process as outlined in Section R523-4-7 below shall be followed.~~

(5) ~~At the conclusion of the negotiated period, the receiving LMHA will assume all responsibility for the full continuum of mental health services, including Hospital care.~~

R523-4-7. Conflict Resolution.

(1) ~~The Division will work to resolve conflicts between the Hospital and a LMHA, as well as conflicts between LMHAs.~~

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

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

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

(iii) ~~if a resolution cannot be reached, the LMHA director and the superintendent of the USH shall meet and attempt to resolve the conflict;~~

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

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

R523-4-8. Formula for Allocation of Funding.

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

(a) ~~The formulas do not apply to funds used by the Division for administration, statewide services consistent with the requirements of Section 62A-15-201 et seq. for discretionary grants awarded to the Division, or funds appropriated for drug courts and the Drug Offender Reform Act.~~

(b) ~~Funds used by the Division for administration shall not exceed 5% of the total annual legislative appropriation to the Division excluding the appropriation for the Utah State Hospital.~~

(c) ~~The funding formulas shall be applied annually to state and federal funds appropriated by the legislature to the Division and are intended for the annual equitable distribution of these funds to the state's local mental health and substance abuse authorities.~~

(d) ~~Excluding discretionary grants, DORA, Drug Court, and other programs for which Utah Code establishes the funding process, funds used by the Division for statewide substance abuse services consistent with requirements of Section 62A-15-201 et seq. shall not exceed 15% of the total annual substance abuse legislative appropriation to the Division.~~

(e) ~~Population data used in the formulas shall be updated annually using the most current data available from the United States Census Bureau.~~

(f) ~~New funding and/or decreases in funding shall be processed and distributed through the funding formulas.~~

(g) ~~Each Local mental health authority and substance abuse authority shall provide funding equal to at least 20% of the state general fund appropriation that it receives to fund services described in that local authority's annual plan.~~

(i) ~~If a local authority is unable to provide the required matching funds, the county shall be allocated the amount the county can match.~~

~~(ii) Excess funds may be allocated on a one-time basis to local authorities with the ability to provide matching funds.~~

~~(iii) If no county can provide the required match, the Division may use the funds to purchase statewide services.~~

~~(h) Changes in funding related to the adoption of new formulas in 2014 shall be phased in over a five-year period beginning in State Fiscal year 2015.~~

~~(2) Funding for mental health shall be allocated as follows:~~

~~(a) The Division shall allocate 5% of mental health funds to the 24 smallest counties ranked by population as a rural differential. The rural differential shall be allocated using the following methodology:~~

~~(i) 35% divided in equal amounts to the six smallest counties:~~

~~(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.~~

~~(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.~~

~~(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.~~

~~(b) The Division shall allocate all remaining mental health funds to the local authorities on a per capita basis, according to the most current population data available from the United States Census Bureau.~~

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

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

~~(a) The Division shall allocate a total of \$2,390,643 in funds used for prior cost of living increases and funds previously contracted with statewide residential providers to the local authorities in an amount equal to the 2014 allocation.~~

~~(b) The Division shall allocate 5% of the remaining funds to the 24 smallest counties ranked by population. The rural differential shall be allocated using the following methodology:~~

~~(i) 35% divided in equal amounts to the six smallest counties:~~

~~(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.~~

~~(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.~~

~~(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.~~

~~(c) Sixty percent of the remaining funds shall be allocated to each county based on the incidence and prevalence of substance abuse based on the following:~~

~~(i) The percent of adults estimated to be binge drinkers as reported by the Behavioral Risk Factor Surveillance System (BRFSS).~~

~~(ii) The percent of adults estimated to be chronic drinkers as reported by BRFSS.~~

~~(iii) The percent of youth reporting alcohol use within the past 30 days by the most current Student Health and Risk Protection Survey (SHARP).~~

~~(iv) The percent of youth estimated to be binge drinkers by the most current SHARP.~~

~~(v) The percent of youth needing drug treatment as reported by the most current SHARP.~~

~~(d) Forty percent of the remaining funds shall be allocated to local authorities on a per capita basis, according to the most current population data available from the United States Census Bureau.~~

R523-4-5. LMHA/LSAA Fee Policy:

~~(1) Each LMHA/LSAA shall require all programs that receive federal and state funds from the Division and provide services to clients to establish a policy to set and collect fees:~~

~~(a) Each fee policy shall include:~~

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

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

~~(b) Any adjustments to the assessed fee shall follow the procedures approved by the LMHA/LSAA.~~

~~(2) The governing body of each LMHA/LSAA shall approve the fee policy and shall set a usual and customary rate for services rendered.~~

~~(3) All LMHA/LSAA programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.~~

~~(4) All clients shall be assessed fees based on:~~

~~(a) The usual and customary rate established by the LMHA/LSAA, or~~

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

~~(5) Fees assessed to clients shall not exceed the average cost of delivering the service.~~

~~(6) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the LMHA/LSAA.~~

~~(7) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.~~

~~(8) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.~~

~~(9) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.~~

R523-4-6. Collections Carryover:

~~(1) LMHA/LSAA programs may carry collections forward from one fiscal year to another.~~

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

~~(a) Appropriations:~~

~~(i) State appropriated monies~~

~~(ii) Federal Block Grant dollars~~

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

~~(b) Collections:~~

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

~~(ii) Any other source of income generated by the LMHA/LSAA.~~

R523-4-7. Priorities for Services.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The Division will receive input from the Utah Behavioral Health Planning Council on priorities for services.

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

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

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

(i) Children, youth, and adults with severe mental illness;

(ii) Children, youth, and adults with acute mental illness; and

(iii) Children, youth and adults who are receiving services from other divisions within the Department of Human Services.

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

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

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

R523-4-8. Consumers Rights.

(1) Each LMHA/LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) Consumer involvement in treatment planning.

(b) Consumer involvement in selection of their primary therapist.

(c) Consumer access to their individual treatment records.

(d) Informed consent regarding medication.

(e) Grievance procedures.

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

R523-4-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from LMHA/LSAAs; procedures for data review and dissemination; LMHA/LSAA participation in

planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division, in collaboration with the LMHA/LSAAs and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year.

R523-4-10. Allocation of Utah State Hospital Adult Bed Days to Local Mental Health Authorities.

(1) The Division herein establishes a formula to allocate to LMHAs the adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a):

(2) The formula established provides for allocation based on:

(a) The percentage of the state's adult population located within a LMHA catchment area; and

(b) A differential to compensate for the additional demand for hospital beds in LMHA catchment areas that are located within urban areas.

(3) The Division hereby establishes a formula to determine adult bed allocation:

(a) The most recent available population estimates are obtained from the United States Census Bureau.

(b) The total adult population figures for the State are identified. Adult means age 18 and over.

(c) Adult population numbers are identified for each county.

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

(i) The total number of adult beds available at the Utah State Hospital is determined.

(ii) 4.8% is subtracted from the total number of beds available for adults to be allocated as an urban differential.

(e) The total number of available adult beds minus the urban differential is multiplied by the county's percentage of the state's total adult population to determine the number of allocated beds for each county:

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

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

(h) At least one adult bed is allocated to each LMHA.

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

(5) Applying the formula:

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

(b) The Division is responsible to calculate the adult bed allocation.

~~(c) Each LMHA will be notified of changes in adult bed allocation.~~

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

~~(7) A LMHA may sell or loan its allocation of adult beds to another LMHA.~~

~~R523-4-11. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.~~

~~(1) The Division establishes a formula to allocate to LMHAs the pediatric beds at the Utah State Hospital.~~

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

~~(3) Each LMHA shall be allocated at least one pediatric bed.~~

~~(4) The formula to determine pediatric bed allocation:~~

~~(a) The most recent available population estimates are obtained from the United States Census Bureau.~~

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

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

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

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

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

~~(6) Applying the formula:~~

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

~~(b) Each LMHA shall be notified of changes in pediatric bed allocation.~~

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

~~(8) A LMHA may sell or loan its allocation of pediatric beds to another LMHA.~~

~~R523-4-12. LMHA/LSAA Program Standards.~~

~~(1) The Division establishes minimum standards for LMHA/LSAA programs.~~

~~(a) Each LMHA/LSAA program shall have the appropriate current license issued by the Office of Licensing, Department of Human Services.~~

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

~~(i) Be consistent with the Division Directives for the Division of Substance Abuse and Mental Health;~~

~~(ii) Designate the projected use of state and federal contracted dollars and the 20% county match dollars;~~

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

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

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

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

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

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

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

~~(vi) Psychotropic medication management;~~

~~(vii) Case management services;~~

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

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

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

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

~~(e) The LMHA/LSAA shall be responsible for monitoring and evaluating all subcontracts to ensure:~~

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

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

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

~~R523-4-13. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.~~

~~(1) Pursuant to the requirements of Subsection 62A-15-602 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.~~

~~R523-4-14. Distribution of Fee-On-Fine (DUI) Funds.~~

~~(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-4-4. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the local authority's governing board to send the funds to the local service provider.~~

~~R523-4-15. 20% Match / Maintenance of Effort Required to Be County Tax Revenue.~~

~~(1) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.~~

~~(2) Failure by any county to meet its obligations under this requirement shall result in the amount of State General Funds allocated to that county by formula as described in Section R523-4-4 being lowered by the percent by which the county under-matches these funds.~~

~~KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority~~

~~Date of Enactment or Last Substantive Amendment: April 7, 2014
Authorizing, and Implemented or Interpreted Law: 17-43-302;
62A-15-103; 62A-15-105(5); 62A-15-603; 62A-15-612; 62A-15-108;
62A-15-704(3)(a)(i); 62A-15-704(3)(a)(ii); 62A-15-713(7); 62A-15-1003;
17-43-204; 17-43-301(4)(a)(x); 17-43-306]~~

Human Services, Substance Abuse
and Mental Health
R523-4
Screening, Assessment, Prevention,
Treatment and Recovery Support
Standards for Adults Required to
Participate in Services by the Criminal
Justice System

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39864

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to the requirement in H.B. 348 passed during the 2015 General Session, this rule prescribes the standards for mental health and substance use disorder screening, assessment, prevention, treatment, education and recovery supports services for adult individuals required to participate in treatment by the court or the Board of Pardons and Parole.

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on: 1) standards for criminogenic risk screening and assessment; 2) standards for substance use disorder and mental health screenings; 3) standards for mental health and substance use disorder assessments; 4) standards for providers of educational or prevention series; 5) standards for community-based treatment programs; 6) standards for jail or prison treatment programs; 7) documentation standards for community and jail/prison based treatment services; 8)

certification procedures for educational series and treatment providers; 9) grounds for denial, corrective action, suspension, and revocation of educational series or treatment providers; 10) corrective action; 11) suspension and revocation; 12) procedure for denial, suspension, or revocation; and 13) posting of certified providers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Part 2 and Section 63G-4-203 and Subsection 62A-15-103(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule will have no impact on the state budget. Justice Reinvestment Initiative (JRI) funds will be contracted primarily to county government. The Division of Substance Abuse and Mental Health (DSAMH) will provide oversight within existing resources. The Utah Department of Corrections (UDC) will also have no financial impact. Programs operated by UDC will need to meet the standards outlined in this rule. This may result in fewer individuals served. However, this rule does not mandate or require additional funds for treatment services.

◆ **LOCAL GOVERNMENTS:** Treatment funds will be contracted by DSAMH to county governments. Funds do not create an entitlement for individuals involved in the justice system but strengthen the existing safety net. Meeting the standards may require higher expenditures per client. However, services will only be provided within appropriation.

◆ **SMALL BUSINESSES:** Small business will not be impacted by this rule. Private treatment providers may choose to change business practice to meet new standards. This will likely result in additional revenue from the criminal justice system.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** DSAMH does not anticipate increased costs to this class of persons. If persons in this class that are private treatment providers choose to change business practice to meet the new standards, this will likely result in additional revenue from the criminal justice system.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DSAMH does not anticipate that there will be a compliance cost for affected persons because these services will be provided within the funding of the legislative appropriation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Human Services does not anticipate a fiscal impact on businesses because these programs will be provided within the funding allocations provided by the legislative appropriations.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-4. Screening, Assessment, Prevention, Treatment and Recovery Support Standards for Adults Required to Participate in Services by the Criminal Justice System.

R523-4-1. Authority.

This rule is authorized by Section 62A-15-103(h) requiring the Division of Substance Abuse and Mental Health (Division) to establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment to individuals who are required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated.

R523-4-2. Purpose.

This rule prescribes the standards for mental health and substance use disorder screening, assessment, prevention, treatment, education and recovery supports services for adults required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated.

R523-4-3. Definitions.

(1) "Assessment" means an in-depth clinical interview with a licensed mental health therapist, used to:

- (a) Determine if an individual is in need of:
 - (i) Mental health or substance use disorder treatment services;
 - (ii) Educational or Prevention series;
 - (iii) Recovery support services;
 - (iv) Services to reduce criminogenic risk factors; or
 - (v) A combination of Subsection R523-4-3(1)(a)(i) through Subsection R523-4-3(1)(a)(iv).
- (b) Recommend a needed level of care or array of services.

(2) "Criminogenic Risk" means offender characteristics that are directly related to researched causation of crime.

(3) "Criminogenic Need" means dynamic or changeable attributes of offenders that are directly linked to criminal behavior that should be targeted to develop a comprehensive treatment plan.

(4) "Educational or Prevention Series" means a court-ordered and evidence-based instructional series for individuals with low criminogenic risk obtained at a substance use disorder program that is approved by the Division of Substance Abuse and Mental

Health in accordance with Section 62A-15-105 designed to prevent the onset of substance use and/or mental health disorders and reduce criminogenic risk.

(5) "Level of Care" means the intensity of either substance use disorder services needed as defined by the American Society of Addiction Medicine (ASAM) or the array of services needed to address an individual's mental health issues.

(6) "Recovery" means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(7) "Recovery Support" means social support services or activities provided before, during or after completion of acute treatment services to enhance an individual's ability to either attain or retain their recovery from either mental health or substance use disorders.

(8) "Screening" means a preliminary appraisal of an individual to determine if further assessment of mental health, substance use or criminogenic needs is needed.

(9) "Treatment" means the array of therapeutic services, including individual, family, group services, medications and interventions designed to improve and enhance social or psychological functioning and reduce criminogenic risk for individuals identified as having either mental health or substance use disorders. The ultimate goal of treatment services is to engage the individual in a process of recovery.

R523-4-4. Standards for Criminogenic Risk Screening and Assessment.

(1) Prior to participating in educational, preventative or treatment services adults shall be given a brief, validated, risk and needs screen to determine whether the adult is of low, moderate, or high risk to re-offend.

(a) For individuals over the age of eighteen (18), the screening instrument to be used shall be the most current version of the Level of Service Inventory-Revised: Screening Version (LSI-R:SV).

(2) Screenings shall:

(a) Be conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;

(b) Collect information about behaviors and characteristics known to predict re-offending including delinquency history, social history, and attitudes/behaviors.

(3) If the screen indicates a high or moderate likelihood of re-offending the adult shall be given an in-depth assessment of criminogenic risk and need.

(a) The Level of Service/Risk, Need, Responsivity (LS/RNR) shall be used for males.

(b) The Women's Risk Needs Assessment (WRNA) shall be used for females.

(4) The criminogenic assessment shall examine a wide variety of factors related to the adult's strengths and challenges including: criminal history, school, employment, relationships, environment, current living arrangements, alcohol and drugs, mental health, attitudes, behaviors, and skills.

(5) The criminogenic assessment shall also identify protective factors that are related to the reduced likelihood of re-offending and risk factors that are related to the increased likelihood of re-offending.

R523-4-5. Standards for Substance Use and Mental Health Disorder Screenings.

(1) Adults shall be screened using an instrument(s) that has been evaluated and found reliable and valid by the scientific community to determine whether the adult is in need of a comprehensive assessment.

(2) Screenings shall be:

(a) Conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;

(b) Trauma-sensitive, developmentally appropriate, culturally sensitive, short, simple, and easy to administer and interpret by a wide variety of professionals who work with adults.

(3) The individual shall be referred for an assessment if the screening identifies a potential substance use and/or mental health disorder.

(4) Screenings shall not be used to determine diagnosis but may assist in determining the need for further assessment.

R523-4-6. Standards for and Substance Use and Mental Health Disorder Assessments.

(1) Assessments shall be conducted by a licensed mental health therapist using a standardized process/instrument(s) that has been evaluated by the scientific community and determined to be reliable and valid for the purpose of assessing individuals.

(2) Assessments shall identify the individual's need for Substance Use Disorder or Mental Health services in the following modified ASAM Patient Placement Criteria dimensions:

(a) Risk of acute psychosis, intoxication/withdrawal;

(b) Biomedical conditions or complications;

(c) Emotional, behavioral, or cognitive conditions;

(d) Readiness to change;

(e) Relapse, continued use or continued problem potential; and

(f) Recovery environment.

(3) The assessment shall include relevant information on:

(a) The individual's psychosocial function, substance use including tobacco/nicotine, mental and physical health, and other factors, such as educational experiences, trauma history, cultural issues, legal involvement, risk to criminally re-offend and family relationships that are relevant to the purpose of the assessment;

(b) Strengths, resiliencies, natural supports, interests of the individual, and an evaluation of the individual's unique abilities;

(c) Developmental and functional levels, social, emotional, communication abilities and strengths, and independent living skills;

(d) Cognitive, social, and affective development; family, peer, and intimate relationships; trauma; current or past emotional, physical or sexual abuse; suicidality; and safety;

(e) Collateral information from other sources that are relevant to the individual's situation and provides insight into the issues in Subsection R523-4-6(2)(a) through (2)(d).

(4) The assessment will include a diagnosis when clinically indicated.

(5) Based on the screening and the assessment, the assessor shall make recommendations regarding the needed level of care and services to address the identified clinical and criminogenic needs.

(6) The level of care and array of services shall be based on the ASAM or equivalent Mental Health criteria.

R523-4-7. Standards for Providers of Educational or Prevention Series.

(1) Entities wishing to provide an intervention, program, activity or curriculum to fulfill the legal requirements of court-referred individuals set forth in Subsection 62A-15-103(h) shall:

(a) Obtain and maintain an outpatient or residential facility license from the Department of Human Services, Office of Licensing.

(b) Submit an application to the Division for review that includes a description of how their proposed intervention, activity, or curriculum:

(i) Meets the requirements for listing on Utah's registry of evidence-based practices identified in Section R523-9;

(ii) Addresses the substance use, mental health and criminogenic needs of the targeted population;

(iii) Meets the requirements set forth in Subsection 62A-15-103(h) and Subsection R523-4-7(1)(b) through 1(f).

(c) Not implement any educational programs until approved by the Division.

(d) Maintain records documenting the individual's attendance and course completion or failure to attend and/or complete.

(e) Shall not include minors in adult groups.

(f) Serve low criminogenic risk individuals and high criminogenic risk individuals separately.

(g) Provide accurate information and be designed to promote compliance with Utah laws.

R523-4-8. Standards for Community-based Treatment Programs.

(1) All programs shall maintain the appropriate license from the Department of Human Services Office of Licensing for the services being provided.

(2) All programs shall submit Treatment Episode Data (TEDs) admission and discharge data as outlined in the Division's most current Division Directives.

(3) Programs shall evaluate all participants for criminogenic risk and need, and deliver services that target the specific risk and needs identified.

(4) Individuals with high risk and individuals with low risk to re-offend shall be treated separately.

(5) Programs shall coordinate and communicate with Adult Probation and Parole, county sheriff's offices, or other necessary criminal justice agencies on a regular and consistent basis as agreed.

(6) Programs shall provide multi-dimensional treatment that targets the validated criminogenic risk factors.

(7) Treatment participation and length shall be of sufficient dosage/duration to affect stable behavioral change.

(8) Treatment intensity, duration and modality shall be based on the current ASAM or comparable mental health criteria and medical necessity determined by the ongoing assessment process.

(9) The Division shall develop performance metrics to evaluate the ability of programs to engage and retain adults in the appropriate intensity and modality of service.

(10) Treatment programs shall ensure that public funds are the payor of last resort.

(a) Treatment programs shall coordinate or refer individuals to the Department of Workforce Services or healthcare navigators for assistance with eligibility for public or private insurance plans.

(b) Treatment programs may negotiate and assess usual and customary fees to adults.

(11) Treatment programs shall:

(a) First assess level of motivation for treatment and implement strategies to increase engagement;

(b) Assess individuals for mental health, substance use disorder and other criminogenic risks using validated instruments and protocols;

(c) Diagnose, treat or ensure treatment for co-occurring conditions;

(d) Develop an individualized treatment plan that identifies a comprehensive set of tools and strategies that address the client's identifiable strengths as well as her or his problems and deficits;

(e) Provide comprehensive treatment services;

(f) As appropriate and with consent, involve families and support persons in the treatment and recovery process;

(g) Use developmentally appropriate and informed treatments;

(h) Monitor drug use through drug testing and other means;

(i) Individuals testing positive for drugs or alcohol shall not be denied entry or removed from treatment from a program solely for positive drug tests.

(ii) Programs shall comply with all Division Directives for Drug testing as published in the Annual DSAMH Division Directives.

(i) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;

(j) Recognize gender, cultural, linguistic, and other individual differences in their treatment approach;

(k) Provide or link to ongoing chronic disease management, recovery support, monitoring and aftercare services;

(l) Ensure all individuals with alcohol and/or opioid disorders shall be educated and screened for the potential use of medication-assisted treatment; and

(m) Develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as HIV/AIDS, Hepatitis B and C, and tuberculosis.

(n) Complete and submit the National Survey on Substance Abuse Treatment Services (N-SATTS);

(12) Treatment programs shall work with individuals to identify needed and desired recovery supports.

(a) Participation in recovery support shall be voluntary.

(b) Whenever possible, individuals shall be encouraged and given a choice of potential recovery support services and a choice of programs.

(c) Services such as case management, housing, employment training, transportation, childcare, healthcare, and peer support may be provided before, during or after the completion of acute treatment services.

R523-4-9. Standards for Jail or Prison Treatment Programs.

(1) Individuals should be screened for criminogenic risk, mental health, substance use disorders and substance withdrawal syndromes.

(2) Individuals with signs and symptoms of withdrawal should receive timely medical care or a transfer to a more appropriate facility that can provide standard detoxification services.

(3) Jail or prison-based treatment service providers shall coordinate care with community-based treatment providers so that individuals may transition to treatment services in the community.

(4) Treatment programs shall:

(a) First assess level of motivation for treatment and implement strategies to increase engagement;

(b) Assess individuals for mental health, substance use disorders and criminogenic risk using scientifically validated instruments and protocols;

(c) Diagnose and treat or ensure treatment for co-occurring conditions;

(d) Provide comprehensive treatment services;

(e) As appropriate and with consent, involve families and support persons in the treatment process;

(f) Use developmentally appropriate and informed treatments;

(g) Monitor drug use through drug testing and other means;

(i) Programs shall comply with all Division Directives for drug testing as published in the annual DSAMH Division Directives.

(h) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders.

(i) Recognize gender, cultural, linguistic, and other individual differences in their treatment approach;

(j) Provide ongoing chronic disease management, recovery support, monitoring and link to needed community supports

(k) All individuals with alcohol and/or opioid disorders shall be educated and screened for the potential use of medication-assisted treatment.

(l) Treatment providers shall develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as HIV/AIDS, Hepatitis B and C, and tuberculosis.

(m) Work with individuals to identify needed and desired recovery supports.

(i) Recovery supports may include preparation/planning for housing, employment, healthcare, peer support or other services upon release.

(ii) Recovery supports may be provided before, during or after the completion of acute treatment services.

(n) Complete and submit the National Survey on Substance Abuse Treatment Services (N-SATTS);

R523-4-10. Documentation Standards for Community and Jail/Prison Based Treatment Services.

(1) A complete and accurate record of all clinical services shall be kept for each individual served that contains the following information:

(a) Any and all screenings and assessments completed;

(b) Any and all consent forms or required disclosures;

(c) A comprehensive treatment plan;

(d) Progress notes;

(e) Continuing recovery recommendations upon discharge; and

(f) Record reflects cultural and gender specificity in treatment.

(2) The individual record is maintained in a manner so as to protect confidentiality and comply with 42 CFR Part 2 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) documentation/privacy standards. The record is organized, clear, complete, current and legible.

(a) Consent forms for any release of information shall be found in the file.

(b) Consent forms shall be complete, and contain a statement that consent is subject to revocation, and shall be signed and dated by the patient.

(c) Each file shall contain a signed and witnessed Acknowledgement of Receipt of Privacy Statement.

(3) The individual record shall contain documentation of the initial assessment/engagement session.

(a) The assessment/engagement session identifies presenting problems, individual goals and [http://useonlyasdirected.org/get-help-now/initial diagnosis](http://useonlyasdirected.org/get-help-now/initial-diagnosis).

(b) The assessment/engagement session includes a statement of the individual's presenting problem(s) and:

(i) Identification and documentation of acute psychosis, intoxication/withdrawal relevant to the presenting problem.

(ii) Identification and documentation of biomedical conditions and complications relevant to the presenting problem.

(iii) Identification and documentation of emotional, behavioral, cognitive conditions, and/or complications relevant to the individual's current situation and presenting problem.

(iv) Identification, evaluation and documentation of readiness to change relevant to presenting problem.

(v) Identification and documentation of relapse, or continued problem potential relevant to presenting problem.

(vi) Identification and documentation of the individual's recovery environment relative to presenting problem.

(vii) Identification of recovery support services needed relevant to presenting problem.

(viii) An assessment/engagement session summary includes recommendations for level of care and intensity of services needed.

(ix) Documentation of an assignment for the individual to complete for their next session.

(4) Any and all screenings and assessments shall be documented in the individual file.

(a) The assessment information is current and includes the justification for the assessed level of care and array of services, as well as justification if level of care is being substituted.

(b) Assessment dimensions are current and are updated as new information is received, new goals are identified, and as the individual progresses or regresses.

(c) Assessment process is ongoing and changes to assessment information are reflected throughout the record.

(d) Level of care and intensity of services are supported by ongoing assessment information, or difference is clinically justified.

(e) Assessment shall be signed and include the title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

(5) A treatment plan that contains the following:

(a) Specific individualized long-range goals;

(b) Behaviorally measurable short-term objectives that support long-range goals;

(c) Evidence of the individual's participation in development of the plan;

(d) Evidence that the plan is based on the individual's goals and other needs identified in the screening and assessments;

(e) Objectives that are measurable, achievable within a specified time frame and reflect developmentally appropriate activities that support progress towards achievement of individual goals;

(f) Substance use disorder treatment plans should be based on the six ASAM Patient Placement Dimensions and shall address critical areas identified in each dimension. Mental Health Recovery Plans shall be organized in a similar manner;

(g) Interventions designed to help the patient complete the objectives; and

(h) Signature and title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

(6) The individual file shall include documentation of the individual's status throughout the individual record including:

(a) Changes in types, schedule, duration and frequency of therapeutic interventions to facilitate individual progress as well as changes in individual objectives and goals;

(b) Each contact shall be documented in a timely manner;

(c) Progress notes shall be kept that identify the date, duration and type of intervention;

(d) Progress notes shall document progress or lack of progress on the individual's goals as well as the clinician's assessment of the individual's changes in behaviors, attitudes and beliefs;

(e) Progress notes shall reflect clinician's assessment of the effectiveness of the therapeutic interventions and plans for future interventions;

(f) Notes shall be legible and signed by a qualified staff indicating appropriate credentials;

(g) No-shows, cancellations or gaps in service such as vacation, incarceration or home visits shall be documented;

(h) Individual and group notes shall be specific and document progress towards achievement of the objectives identified in the recovery plan and as each objective is completed, identify a new objective;

(i) Lack of progress toward treatment/recovery plan goals and resulting adjustments to the recovery plan shall also be documented;

(j) Notes shall reflect behavioral changes as well as changes in attitudes and beliefs;

(k) Other group activities such as psychoeducation, life skills, case management, and recreation may be summarized and dated with the date the activity occurred;

(l) Recovery support services are documented to the extent required for clinical continuity and in order to meet financial requirements;

(m) Changes in assessment information, current level of care and treatment plan; and

(n) Upon discharge, recommendations for ongoing services include the extent to which established goals and objectives were achieved, what ongoing services are recommended, and a description of the individual's recovery support plan.

R523-4-11. Certification Procedures for Educational Series and Treatment Providers.

(1) Programs seeking first-time approval or re-approval shall make application to the Division at least 60 days prior to delivering services.

(2) All application forms shall be reviewed by the Division.

(3) The Division shall determine if the application is complete and demonstrates compliance with this rule.

(4) The Division approves the application and determines the program has met all other requirements, the Division shall certify the program for a period of two years.

(5) The Division shall notify in writing all applicants within 30 days of submission of an application, whether the application is:

(a) Approved,

(b) Denied, or

(c) Requires additional information.

(6) If an application for re-approval requires additional information, a previously certified program may continue to provide services for 30 days from the date of notification unless notified by the Department of Human Services to cease and desist.

R523-4-12. Corrective Action.

(1) When the Division becomes aware that a provider is in violation of this rule the Division shall:

(a) Identify in writing the specific areas in which the provider is not in compliance; and

(b) Send written notice to the provider within 30 days after becoming aware of the violation.

(2) The provider shall submit a written plan for achieving compliance within 30 days of notification of noncompliance.

R523-4-13. Suspension and Revocation.

(1) The Division may suspend the approval of a provider when a provider fails to:

(a) Respond in writing to areas of noncompliance identified in writing by the Division within the defined period;

(b) Comply with corrective action as agreed upon in its written response to the Division; or

(c) Allow the Division access to information or records necessary to determine the provider's compliance under this rule.

(2) The Division may revoke approval if a provider:

(a) Continues to provide the educational series after suspension;

(b) Fails to comply with corrective action while under a suspension; or

(c) Commits a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

(3) The Division shall notify the Administrative Office of the Courts, the Utah Department of Corrections, the Department of Human Services, Office of Licensing and county local authorities when a certification is suspended or revoked.

R523-4-14. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under this rule and intends to deny, suspend or revoke approval of a provider, the Division shall notify the applicant or provider of the action to be taken.

(2) A notice to suspend or revoke approval shall contain the reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(3) The provider may request a meeting with the Director or their designee within ten calendar days of receipt of notification.

(4) A request for a meeting for this purpose shall be in writing.

(5) Within ten days following the close of the meeting the Division shall inform the provider or applicant in writing of the decision of the Director or Designee of the Division.

R523-4-15. Posting of Certified Providers.

(1) The Division shall maintain and make public a list of all certified educational or prevention series and treatment programs.

(2) The list shall include agency contact information, service location address, target population, information on cost and reimbursement policies, and a brief description of the program.

KEY: offender substance abuse screenings, offender substance abuse assessments, offender substance abuse education series, offender substance abuse treatments

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-103(h); 42 CFR Part 2

Human Services, Substance Abuse and Mental Health **R523-5** Certification of Designated Examiners and Case Managers

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39869

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of their rules. (DAR NOTE: The proposed new rule is Rule R523-7 under DAR No. 39870 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule was to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health (Division). This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Subsection 62A-15-602(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--This rule will be replaced by a new rule, R523-7, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ **LOCAL GOVERNMENTS:** None--This rule will be replaced by a new rule, R523-7, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

- ♦ **SMALL BUSINESSES:** None--This rule will be replaced by a new rule, R523-7, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule will be replaced by a new rule that has been renumbered to coincide with the divisions comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-7, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will not have any fiscal impact on businesses because this rule will be replaced by a new rule, R523-7, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

~~[R523-5. Certification of Designated Examiners and Case Managers.~~

~~**R523-5-1. Authority.**~~

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

~~**R523-5-2. Purpose.**~~

~~The purpose of this rule is to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health (Division).~~

~~**R523-5-3. Designated Examiners Certification.**~~

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

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

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

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

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

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

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

~~(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.~~

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

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

~~(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division and pass the exam at the completion of the training with a minimum of 70% correct.~~

~~(d) The Division Director or designee will determine if experience and qualifications are satisfactory to meet the required standards. The Division Director or designee will also determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.~~

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

R523-5-4. Case Manager Certification.

~~_____ (1) Definitions:~~

~~_____ (a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed or contracted by the local mental health or substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often-persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.~~

~~_____ (b) "Qualified providers" include any individual who is a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed clinical mental health counselor, licensed marriage and family counselor, or a licensed substance abuse counselor, and employed or contracted by a local mental health authority or local substance abuse authority.~~

~~_____ (2) A certified case manager must meet the following minimum standards:~~

~~_____ (a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-5-4(1)(b);~~

~~_____ (b) be at least 18 years of age;~~

~~_____ (c) have at least a high school degree or a GED;~~

~~_____ (d) have at least two years experience in the support of individuals with mental illness, substance abuse and/or related experience in human services.~~

~~_____ (e) be employed or subcontracted by a local mental health authority or a local substance abuse authority;~~

~~_____ (f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and~~

~~_____ (g) completes an approved case management practicum.~~

~~_____ (3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-5-4(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issue a written decision regarding the request for waiver.~~

~~_____ (4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.~~

~~_____ (a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 30 days of completion of case management requirements. The Division shall issue a certificate for three years.~~

~~_____ (b) If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.~~

~~_____ (5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health, substance abuse or related topics.~~

~~_____ (a) A certified case manager shall retain CEU documentation. Documentation should not be sent to the Division unless requested for an audit.~~

~~_____ (b) Documents to verify CEU credits include:~~

~~_____ (i) a certificate of completion documenting continuing education validation furnished by the presenter;~~

~~_____ (ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or~~

~~_____ (iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.~~

~~_____ (6) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Rule R495-876, the Department of Human Services Provider Code of Conduct Policy.~~

~~_____ (a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.~~

~~_____ (b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.~~

~~_____ (c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.~~

~~_____ (d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.~~

~~_____ (7) If a certified case manager fails to complete the requirements for CEUs, their certificate will be revoked or allowed to expire and will not be renewed.~~

~~_____ (8) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times within a twelve-month period.~~

~~_____ (9) The case managers certification must be posted and available upon request.~~

~~**KEY:** designated examiners, involuntary commitment, case managers~~

~~**Date of Enactment or Last Substantive Amendment:** April 7, 2014
Authorizing, and Implemented or Interpreted Law: 62A-15-105; 62A-15-602(3)~~

Human Services, Substance Abuse and Mental Health **R523-5** Adult Peer Support Specialist Training and Certification

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39866

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule prescribes standards for certification of

Peer Support Specialist (PSS) Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an Adult Peer Support Specialist. (DAR NOTE: The proposed repeal is of Rule R523-2 under DAR No. 39865 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on: 1) certification requirements for PSS training programs; 2) the Division of Substance Abuse and Mental Health (DSAMH) oversight of PSS training programs; 3) curriculum requirements for PSS training programs; 4) requirements for an individual to become a PSS; and 5) requirements for an individual to remain qualified as a PSS.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-402

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule is replacing a repealed rule, R523-2, with only minimal edits for numbering and grammatical corrections.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because this rule is replacing a repealed rule, R523-2, with only minimal edits for numbering and grammatical corrections.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to the small businesses because this rule is replacing a repealed rule with only minimal edits for numbering and grammatical corrections.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule is replacing a repealed rule, R523-2, with only minimal edits for numbering and grammatical corrections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because this rule is replacing a repealed rule, R523-2, with only minimal edits for numbering and grammatical corrections.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule is replacing a repealed rule, R523-2, with only minimal edits for numbering and grammatical corrections.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-5. Adult Peer Support Specialist Training and Certification.

R523-5-1. Purpose, Authority and Intent.

(1) Purpose. This rule prescribes standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become an Adult Peer Support Specialist.

(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health, hereinafter referred to as "Division", as authorized by Section 62A-15-402.

(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists.

R523-5-2. Definitions.

(1) "Adult Peer Support Specialist (PSS)" is an individual who has successfully completed an approved Adult Peer Support Specialist Training Program and for ongoing certification has met the requirements outlined in paragraph R523-5-6.

(2) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(3) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as an "Adult Peer Support Specialist Training Program".

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

(8) "Recovery" is a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

R523-5-3. Certification Requirements for Peer Support Specialist Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-5-5 for a PSS.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-5-4. Division Oversight of Program.

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The PSS Training Program shall also allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the PSS Training Program. This process will:

(a) Develop and publish an application to be a PSS.

(b) Solicit input from stakeholders, Peer Support Specialists and other individuals on the review process.

(c) Establish further criteria for acceptance into the PSS program as needed.

R523-5-5. Curriculum Requirements for Adult Peer Support Specialist Training Programs.

(1) This curriculum shall provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the PSS's lived experience and recovery in order to assist in the identified client's recovery:

(a) Etiology of mental illness and substance use disorders;

(b) The stages of recovery from mental illness and substance use disorders;

(c) The relapse prevention process;

(d) Combating negative self-talk;

(e) The Role of Peer Support in the Recovery Process and Using Your Recovery Story as a Recovery Tool;

(f) Dynamics of Change;

(g) Strengthening the Peer Specialist's recovery;

(h) Ethics of Peer Support;

(i) Professional relationships, boundaries and limits;

(j) Scope of Peer Support;

(k) Cultural Competence: Self-Awareness - Cultural Identity;

(l) Stigma and Labeling;

(m) Community resources to support individuals in recovery;

(n) Assisting individuals in Accomplishing Recovery Goals;

(o) Coach, Mentor, and Role Model recovery;

(p) Assist in identification of natural, formal and informal supports;

(q) Stress Management Techniques;

(r) Assisting individuals in reaching educational and vocational goals;

(s) Crisis prevention; and

(t) Assist with physical health and wellness.

(2) The curriculum must be strength based and include:

(a) Active listening and communication skills; and

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-5-6. Requirements to Become an Adult Peer Support Specialist.

(1) Be an individual who participated in substance use disorder or mental health treatment services who is now in sustained recovery, or

(2) Be an individual in recovery from substance use or mental health disorders through means other than treatment services who is now in sustained recovery.

(3) Be at least 18 years of age.

(4) Complete the application process with the Division.

(5) Pass the qualification exam with score of 70% or above.

(6) Have attended and successfully completed a Division approved Peer Support Specialist training program and have a valid certificate from that training.

R523-5-7. Requirements to Remain Qualified as an Adult Peer Support Specialist.

(1) Complete at least twenty (20) hours of continuing education every two (2) years including two (2) hours of ethics training, six (6) hours pertaining specifically to Peer Support Services, one (1) hour of suicide prevention trainings and twelve (12) hours of general mental health and/or substance use disorder training.

(2) Each Adult Peer Support Specialist shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The Adult Peer Support Specialist shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(a) At a minimum, the documentation shall contain the following:

(i) Date of the course;

(ii) Name of the course provider;

(iii) Name of the instructor;

(iv) Course title;

(v) Number of hours of continuing education credit; and

(vi) Course objectives.

KEY: peer support specialist, PSS program, certification of programs, substance use disorder

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-402

Human Services, Substance Abuse
and Mental Health
R523-6
Medication, Psychosurgery and
Electroshock Procedures for Children,
Consumer Rights, Due Process, Family
Involvement

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39871

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of its rules. (DAR NOTE: The proposed new rule is Rule R523-8 under DAR No. 39872 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provided: 1) guidance on medication procedures for children; 2) guidance on psychosurgery and electroshock therapy procedures for children; 3) guidance on family involvement; and 4) guidance on consumer rights.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This rule will be replaced by a new rule that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ SMALL BUSINESSES: None--This rule will be replaced by a new rule that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule will be replaced by a new rule that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

~~[R523-6. Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement.~~

~~**R523-6-1. Authority:**~~

~~This rule is promulgated under authority of Section 62A-15-105.~~

~~**R523-6-2. Purpose:**~~

- ~~(1) The purpose of this rule is to provide:~~
 - ~~(a) Guidance on medication procedures for children.~~
 - ~~(b) Guidance on Psychosurgery and Electroshock Therapy Procedures for Children.~~
 - ~~(c) Guidance on Family Involvement.~~
 - ~~(d) Guidance on Consumer Rights.~~

~~**R523-6-3. Definitions:**~~

- ~~(1) For the purposes of this administrative rule, "guardian" means a parent, and/or legal guardian, and/or legal custodian.~~
- ~~(2) Neutral and Detached Fact Finder is as defined in Subsection 62A-15-703(3).~~
- ~~(3) The "Division" is the Division of Substance Abuse and Mental Health (Division)~~
- ~~(4) "Antipsychotic medication" means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.~~
- ~~(5) A "legal custodian" is one who has been appointed by the Juvenile Court and may include the Division of Child and Family~~

Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health:

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

R523-6-4. Medication Procedures for Children, Legal Authority.

(1) The Division hereby establishes due process procedures for children prior to the administration of antipsychotic medication:

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

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

(i) The child and guardian give consent.

(ii) The child or the guardian does not give consent, but a Designated Examiner determines that antipsychotic medication is an appropriate treatment through a due process proceeding as described in Section 62A-15-704.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to Subsection R523-6-4(1)(f) below.

(c) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with antipsychotic medications:

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

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

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

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

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

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

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

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

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

(d) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information under Subsection R523-6-4(1)(c), and that they consent to the proposed medication treatment.

(e) If either the child or guardian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with Subsection R523-6-4(1)(g).

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

(i) A qualified physician has determined and certifies that they believe the child is likely to cause injury to themselves or to

others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that they believe the child is likely to cause injury to themselves or others if not immediately restrained and provided medication treatment.

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

(C) The medication administered.

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

(g) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of Subsection R523-6-4(1)(h).

(h) If the child or guardian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

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

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

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

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

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

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

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

(iv) The child, guardian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

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

(vi) If needed, the Neutral and Detached Fact Finder may ask everyone to leave the room to allow them time to deliberate.

(j) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and

deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

- ~~_____ (i) The child has a mental illness; and~~
- ~~_____ (ii) The child is gravely disabled and in need of medication treatment for the reason that they suffer from a mental illness such that they (a) are in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifest severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health safety; and/or~~
- ~~_____ (iii) Without medication treatment, the child poses a likelihood of serious harm to themselves, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and~~
- ~~_____ (iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and~~
- ~~_____ (v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.~~
- ~~_____ (k) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or guardian.~~
- ~~_____ (l) A child or guardian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing:~~
 - ~~_____ (i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.~~
 - ~~_____ (ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.~~
 - ~~_____ (iii) A written decision from the panel shall be provided to the child, the child's guardian, the local mental health authority providing treatment to the child, and any other appropriate party.~~
 - ~~_____ (m) In the event that a significant medication change is proposed, the child and/or guardian shall be provided an opportunity to give consent in accordance to Subsection R523-6-4(1)(e) of this section. If the child and guardian refuse to give consent, a medication hearing may be initiated in accordance with Subsection R523-6-4(1)(h) of this section.~~
 - ~~_____ (n) Medication treatment ordered pursuant to Subsection R523-6-4(1)(h) of this section may continue after the initial hearing according to the following process:~~
 - ~~_____ (i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.~~

~~_____ (ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.~~

~~_____ (iii) The Neutral and Detached Fact Finder may order continued medication treatment if they find the following conditions are met:~~

~~_____ (A) The child is still mentally ill; and~~

~~_____ (B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in their ability to function in the least restrictive environment, thereby making them a substantial danger to themselves or others, and~~

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

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

~~_____ (iv) If the neutral and Detached Fact Finder approves continued medication treatment, they shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or guardian.~~

~~_____ (v) At the end of 12 months, the case shall again be reviewed as outlined in this Subsection R523-6-4(1)(n), and shall be reviewed every 6 months while the course of treatment is being administered.~~

~~R523-6-5. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.~~

~~_____ (1) By this rule, the Division establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy:~~

~~_____ (a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority or committed to the legal custody of the Division. The following terms are herein defined:~~

~~_____ (b) "ECT" means electroconvulsive therapy.~~

~~_____ (c) "Psychosurgery" means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.~~

~~_____ (d) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with ECT or Psychosurgery:~~

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

~~_____ (ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;~~

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

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

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

~~_____ (vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects;~~

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

~~_____ (viii) The right to give or withhold consent for the proposed ECT/psychosurgery; and~~

~~_____ (ix) When informing a child and their guardian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two Neutral and Detached Fact Finders to determine the appropriateness of such treatment.~~

~~_____ (e) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in Subsection R523-6-5(1)(d) of this section, and that they consent or do not consent to the proposed treatment.~~

~~_____ (f) If the guardian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.~~

~~_____ (g) Regardless of whether the child or guardian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.~~

~~_____ (h) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.~~

~~_____ (i) Upon receipt of the request, the Director/Designee shall contact two Neutral and Detached Fact Finders, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.~~

~~_____ (j) The child and guardian shall be provided notice of the hearing.~~

~~_____ (k) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document their proposed course of treatment and reason(s) justifying the proposal in the medical record.~~

~~_____ (l) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician. Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.~~

~~_____ (i) The child has the right to attend the hearing, have an adult informant (guardian /foster parent, etc.) present, and to ask pertinent questions.~~

~~_____ (ii) If the child or others become disruptive during the hearing, the two Neutral and Detached Fact Finders may request that those persons be removed. The hearing shall continue in that person's absence.~~

~~_____ (iii) The hearing shall begin with the child, guardian, and any others being informed of the purpose and procedure of the hearing.~~

~~_____ (iv) The record shall be reviewed by the Neutral and Detached Fact Finders and the proposed treatment shall be discussed.~~

~~_____ (v) The child, guardian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.~~

~~_____ (vi) Following the review of the case and the hearing of comments, the two Neutral and Detached Fact Finders shall render a decision~~

~~_____ (vii) If needed the two Neutral and Detached Fact Finders may ask everyone to leave the room to allow them time to deliberate.~~

~~_____ (m) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:~~

~~_____ (i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and~~

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

~~_____ (iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either:~~

~~_____ (A) substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self; or~~

~~_____ (B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or~~

~~_____ (C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and~~

~~_____ (iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and~~

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

~~_____ (n) The basis for the decision shall be supported by adequate documentation. The Neutral and Detached Fact Finders shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or guardian.~~

~~_____ (o) The child and/or guardian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Director/designee of the Division within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.~~

~~_____ (p) ECT or psychosurgery may be commenced within 48 hours of the decision by the Neutral and Detached Fact Finders, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Director/designee physician renders their affirmative decision.~~

~~_____ (q) Upon receipt of a Request, the Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the guardian prior to the commencement of treatment.~~

~~_____ (r) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the~~

procedures set forth in R523-6-5(1)(d) through (q) shall be followed before initiating further treatment.

R523-6-6. Family Involvement.

(1) Each mental health authority shall annually prepare and submit to the Division a plan for mental health funding and service delivery. Included in the plan shall be a method to educate families concerning mental illness and substance use disorders to promote family involvement when appropriate, and with patient consent, in the services of a family member.

(2) The Division will monitor for compliance as part of the annual quality of care site visits.

R523-6-7. Consumers Rights.

(1) Each LMHA and LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning;
(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

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

R523-6-8. Declaration for Mental Health Treatment.

(1) The Division will make available information concerning the declaration for mental health treatment. Included will be information concerning available assistance in completing the document.

(2) Each LMHA shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake.

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

KEY: ~~forced medication hearings and treatment procedures for children, due process, family involvement, consumer rights~~

**Date of Enactment or Last Substantive Amendment: April 7, 2014
Authorizing, and Implemented or Interpreted Law: 62A-15-105]**

Human Services, Substance Abuse
and Mental Health
R523-6
Child/Family Peer Support Specialist
Training and Certification

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39868

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule prescribes standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become a Child/Family Peer Support Specialist. (DAR NOTE: The proposed repeal is of Rule R523-3 under DAR No. 39867 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on: 1) certification Requirements for PSS Training Programs; 2) division Oversight of Program; 3) curriculum requirements for Family Resource Facilitator Training Programs; 4) requirements to Become a Family Resource Facilitator; and 5) requirements to Remain Qualified as a Family Resource Facilitator.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-402

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-3, that was repealed in order to clarify guidance, correct typographical and grammatical errors, and reorganize the numbering system of the division's rules.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because this rule replaces a repealed rule, R523-3, that was repealed in order to clarify guidance, correct typographical and grammatical errors, and reorganize the numbering system of the division's rules.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule replaces a repealed rule, R523-3, that was repealed in order to clarify guidance, correct typographical and grammatical errors, and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-3, that was repealed in order to clarify guidance, correct typographical and grammatical errors, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no Compliance costs for affected persons because this rule replaces a repealed rule, R523-3, that was repealed in order to clarify guidance, correct typographical and grammatical errors, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule, R523-3, that was repealed in order to clarify guidance, correct typographical and grammatical errors, and reorganize the numbering system of the division's rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-6. Child/Family Peer Support Specialist Training and Certification.

R523-6-1. Purpose, Authority and Intent.

(1) Purpose. This rule prescribes standards for certification of Peer Support Specialist Training programs; the qualifications required of instructors for providing Peer Support Training; and the requirements to become a Child/Family Peer Support Specialist.

(2) Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Section 62A-15-402.

(3) Intent. The objective of the peer support specialist training is to establish training programs to certify individuals that have completed requisite training to work as substance use disorder and/or mental health peer support specialists.

R523-6-2. Definitions.

(1) "Approved Curriculum" means a curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means that the Division verifies the individual has met the requirements outlined in this rule to be a peer support specialist and has completed the required training.

(3) Child/Family Peer Support Specialist is a "Family Resource Facilitator" (FRF) who is an individual who has successfully completed an approved Family Resource Facilitator Training Program and for ongoing certification has met the requirements outlined in paragraph R523-6-6.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Peer Support Specialist Training Program" is an instructional series operated by an approved agency or organization which satisfies the standards established by the Division and is herein referred to as a "Family Resource Facilitator Training Program".

(7) "Program Certificate" is a written authorization issued by the Division to the training entity which indicates that the Program has been found to be in compliance with these Division standards.

R523-6-3. Certification Requirements for PSS Training Programs.

(1) An application for Program Certification will require that the program provide, among other things:

(a) Qualifications of individuals who will be providing the training.

(b) A curriculum that outlines no less than forty (40) hours of face-to-face instruction covering the curriculum requirements outlined in paragraph R523-6-5 for Family Resource Facilitator Training.

(c) A plan to ensure that instructors continue to meet reported qualifications and adhere to the approved curriculum.

(d) An agreement to maintain records of the individual's attendance and completion of all program requirements for at least seven years.

(e) An agreement to comply with all applicable local, state and federal laws and regulations.

(2) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-6-4. Division Oversight of Program.

(1) The Division may enter and survey the physical facility, program operation, review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) The Family Resource Facilitator Training Program also agrees to allow representatives from the Division and from the local authorities as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) The Division will establish an application process to review and approve applicants for the Family Resource Facilitator Training Program. This process will:

(a) Develop and publish an application to be a Family Resource Facilitator Training Program.

(b) Solicit input from stakeholders, Family Resource Facilitators and other individuals on the review process.

(c) Establish further criteria for acceptance into the program as needed.

R523-6-5. Curriculum Requirements for Family Resource Facilitator Training Programs.

(1) This curriculum shall provide at least forty (40) hours of instruction for original certification and twenty (20) hours for any and all re-certifications. The curriculum shall include the following components as they relate to the FRF's lived experience as a parent or caregiver of a youth with complex mental health and/or substance use needs in order to promote family and youth resiliency and assist in the identified client's recovery:

(a) Systems of Care

(i) Providing family driven, youth guided, culturally competent and community based services

(A) History of the family involvement movement

(ii) Wraparound and Wraparound process including:

(A) Strength, Needs and Cultural Discovery

(B) Assist in identification of natural, formal and informal supports

(C) Prioritize needs/goals and develop a plan of care

(D) Crisis Prevention

(E) Implement action steps and celebrate successes

(F) Transition Planning

(b) Family Resource Facilitator (FRF) model for strengthening families and building communities.

(i) FRF Roles

(A) Resource Coordination

(B) Family Education and Support

(C) Family Advocacy

(D) Wraparound to Fidelity

(ii) Training and supervision expectations

(c) Ethics of Peer Support

(d) Professional relationships, boundaries and limits

(e) Multi-agency coordination

(f) Family advocacy (individual and system change)

(g) Stigma and Labeling

(h) Assisting Individuals in Accomplishing Recovery Goals

(i) Coach, Mentor, and Role Model recovery

(j) Stress Management Techniques

(k) Assist with reaching age appropriate educational and vocational goals; and

(l) Assist with physical health and wellness

(2) The curriculum must be strength based and include:

(a) Active listening and communication skills

(b) Basic motivational interviewing skills.

(3) The curriculum must include a strong emphasis on ethical behavior, dual relationships, scope of peer support and professional boundaries and should include case studies, role plays and experiential learning.

R523-6-6. Requirements to Become a Family Resource Facilitator.

(1) Be a parent of a child who has received services for a mental, emotional, behavioral or substance use disorder or an adult who has an on-going and personal relationship with a family member who is a child who is receiving or has received services for a mental, emotional, behavioral or substance use disorder.

(2) Be at least 18 years of age.

(3) Have attended and successfully completed a Division approved Child, Youth and Family Peer Support Specialist training program and have a valid certificate from that training.

(4) Pass the qualification exam with a score of 80% or above.

R523-6-7. Requirements to Remain Qualified as a Family Resource Facilitator.

(1) FRF's are encouraged to advance toward additional levels of demonstrated competency and specialization achieved through continued training, mentoring and evaluation during an approved practicum.

(2) Complete at least twenty (20) hours of approved continuing education per year including two (2) hours of ethics training and six (6) hours pertaining specifically to Family Resource Facilitation.

(3) Provide proof to the Division of completing the required training on an annual basis.

KEY: peer support specialist, family resource facilitator, certification of programs, mental health and substance use disorder

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-402

**Human Services, Substance Abuse
and Mental Health
R523-7
Certification of Designated Examiners
and Case Managers**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39870

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health. (DAR NOTE: The proposed repeal is of Rule R523-5 under DAR No. 39869 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on Designated Examiners certification and Case Management certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Subsection 62A-15-602(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-5, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

♦ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to the local government because this rule replaces a repealed rule that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

♦ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to the small businesses because this rule replaces a repealed rule that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons because this rule replaces a repealed rule that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-7. Certification of Designated Examiners and Case Managers.

R523-7-1. Authority.

This rule is promulgated under authority of Section 62A-15-105.

R523-7-2. Purpose.

The purpose of this rule is to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health (Division).

R523-7-3. Designated Examiners Certification.

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

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

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application, the Director will initiate a review and examination of the applicant's qualifications.

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

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

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

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

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

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

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

(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division and pass the exam at the completion of the training with a minimum of 70% correct.

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

(e) Upon satisfactory completion of the required experience and training, the Division Director or designee will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated

examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-7-4. Case Management Certification.

(1) Definitions.

(a) Case Management Certification means the process by which an individual obtains certification from the Division that allows them to provide case management services for individuals with mental illness and / or substance use disorders.

(i) Case Management services can be provided by:

(A) A qualified provider, as defined in the Utah Medicaid Provider Manual, found at <https://medicaid.utah.gov/Documents/manuals/pdfs/Medicaid%20Provider%20Manuals/Targeted%20Case%20Management/Serious%20Mental%20Illness/Archive/2014/SeriousMentalIllness1-14.pdf>.

(B) An individual under the supervision of a qualified provider employed or contracted by the local mental health or substance abuse authority. The qualified provider shall be responsible for coordinating, advocating, linking and monitoring the Case Manager.

(b) Case Manager tasks include activities that assist individuals with:

(i) Serious mental illness;

(ii) Serious emotional disorder; and

(iii) Individuals with substance use disorders.

(c) Case Managers tasks include:

(i) Access medical and related therapeutic services; and

(ii) To promote the individual's general health and their ability to function independently and successfully in the community.

(2) A certified case manager must meet the following minimum standards:

(a) Be at least 18 years of age;

(b) Have at least a high school degree or a GED;

(c) Have at least have at least two years experience in Human Services or related field (may include relevant education/volunteer activities).

(d) Be employed or subcontracted by a local mental health authority or a local substance abuse authority;

(e) Pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(f) Have completed an approved case management practicum.

(3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-7-4(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issue a written decision regarding the request for waiver.

(4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division. Only complete applications supported by all necessary documents shall be considered.

(a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 30 days of

completion of case management requirements. The Division shall issue a certificate for three years.

(b) If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.

(5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health, substance use disorder or related topics.

(a) A certified case manager shall retain CEU documentation. Documentation should not be sent to the Division unless requested for an audit.

(b) Documents to verify CEU credits include:

(i) A certificate of completion documenting continuing education validation furnished by the presenter;

(ii) A letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) An official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(6) Certified case managers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.

(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(7) If a certified case manager fails to complete the requirements for CEUs, their certificate will be revoked or allowed to expire and will not be renewed.

(8) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times within a twelve-month period.

(9) The case manager's certification shall be posted and available upon request.

(10) The LMHA/LSAA shall notify the Division in writing when a Case Manager is no longer employed or subcontracted. The Case Manager certification shall be void upon separation of employment or termination of contract with the LMHA/LSAA.

KEY: designated examiners, involuntary commitment, case managers

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-105; 62A-15-602(3)

**Human Services, Substance Abuse
and Mental Health
R523-8
Evidence-Based Prevention Registry**

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 39874
FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of their rules. (DAR NOTE: The proposed new rule is Rule R523-9 under DAR No. 39875 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule defined evidence-based prevention and evidence-informed prevention and prescribe standards for listing a prevention program or intervention on a statewide registry of evidence-based prevention programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32B-2-402(1)(f)

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** None--This rule will be replaced by a new rule, R523-9, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
 ♦ **LOCAL GOVERNMENTS:** None--This rule will be replaced by a new rule, R523-9, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
 ♦ **SMALL BUSINESSES:** None--This rule will be replaced by a new rule, R523-9, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule will be replaced by a new rule, R523-9, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-9, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is not a fiscal impact on businesses since this rule will be replaced by a new rule, R523-9, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
 ♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

~~**[R523-8. Evidence-Based Prevention Registry.**~~

~~**R523-8-1. Purpose and Statutory Authority.**~~

~~_____ (1) Purpose. These rules define evidence-based prevention and evidence-informed prevention and prescribe standards for listing a prevention program or intervention on a statewide registry of evidence-based prevention programs.~~

~~_____ (2) Statutory Authority. These definitions and standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (DSAMH) as authorized by Subsection 32B-2-402(1)(f).~~

~~_____ (3) Intent. The objective of this rule is to decrease the harmful effects of substance use through implementation of evidence-based and evidence-informed prevention.~~

~~**R523-8-2. Definitions.**~~

~~_____ (1) Evidence-based prevention includes programs, activities and strategies (hereinafter referred to as "interventions") that:~~

~~_____ (a) Are included in private or federal registries that identify evidence-based interventions proven to result in sustained positive benefits to individuals or communities.~~

~~_____ (b) Have been reported in peer-reviewed journals and with demonstrated positive effects on the primary targeted outcome; or~~

~~_____ (c) Have documented effectiveness supported by other sources of information and the consensus judgment of informed experts, and meet the following criteria:~~

~~_____ (i) The intervention is based on a theory of change that is documented in a clear logic or conceptual model; and~~

~~_____ (ii) The intervention is similar in content and structure to interventions that appear in registries and/or the peer-reviewed literature; and~~

~~_____ (iii) The intervention is supported by documentation that it has been effectively implemented in the past, and multiple times, in a~~

manner attentive to scientific standards of evidence and with results that show a consistent pattern of credible and positive effects; and
 (iv) The intervention is reviewed and deemed appropriate by the Division of Substance Abuse and Mental Health.

(2) Evidence-informed prevention includes programs, activities and strategies (hereinafter referred to as "interventions"):

(a) With documented effectiveness supported by other sources of information and the consensus judgment of informed experts; and

(b) Have been reviewed by the DSAMH and determined to meet the criteria for listing on Utah's Statewide Registry of Evidence-based Programs.

R523-8-3. Requirements For Listing On Statewide Registry of Evidence-Based Programs.

(1) The DSAMH shall develop and publish a statewide registry of evidence-based prevention interventions. This registry should be made available to the public in print and electronic formats.

(2) The DSAMH shall develop and make available registry application forms that include guidance on the documentation needed for review by DSAMH to the public in print and electronic formats.

(3) Only programs/interventions determined to be evidence-based in accordance with the definition in this rule shall be listed on the registry upon completion of an application and required forms.

(4) The registry shall at a minimum include contact information for key staff, a short program description, identification of the target population, and identify the long-term goals.

(5) Programs/interventions shall annually submit an application with a DSAMH approved logic model for continued listing on the registry.

R523-8-4. DSAMH Review Process.

(1) The DSAMH shall create an evidence-based prevention workgroup comprised of informed prevention experts to review programs that includes:

(a) At least one Doctorate level social scientist with at least three years experience evaluating prevention interventions similar to those under review;

(b) At least one urban prevention practitioner;

(c) One rural prevention practitioner;

(d) One representative from the Utah Substance Abuse Advisory Council;

(e) A representative from public health;

(f) DSAMH prevention staff; and

(g) Other members as needed.

(2) The Evidence-based Prevention Workgroup shall review all submissions to DSAMH and make recommendations to the DSAMH Division Director regarding whether the submission should be listed on the Statewide Registry of Evidence-based Programs.

(3) Programs for which the Evidence-based Workgroup determines do not meet the criteria for inclusion on the Statewide Registry of Evidence-Based Programs shall receive a written explanation of the decision and recommendations for the intervention that would improve the likelihood of meeting the requirements for listing on the registry.

KEY: ~~evidence-based prevention; statewide registry; evidence-based prevention workgroup~~

~~Date of Enactment or Last Substantive Amendment: January 6, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 32B-2-402(1)(f)~~

Human Services, Substance Abuse and Mental Health **R523-8** Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39872

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes establishes due process procedures for psychiatric treatment for children. It also provides guidance on family involvement, and consumer rights. (DAR NOTE: The proposed repeal is of Rule R523-6 under DAR No. 39871 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to provide: 1) guidance on medication procedures for children; 2) guidance on psychosurgery and electroshock therapy procedures for children; 3) guidance on family involvement; and 4) guidance on consumer rights.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Section 62A-15-704 and Subsection 62A-15-703(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-6, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

♦ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to a local government because this rule replaces a repealed rule, R523-6, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

♦ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule

replaces a repealed rule, R523-6, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-6, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because this rule replaces a repealed rule, R523-6, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule, R523-6, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov
 ◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-8. Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement.
R523-8-1. Authority.
This rule is promulgated under authority of Section 62A-15-105.

R523-8-2. Purpose.

- (1) The purpose of this rule is to provide:
 - (a) Guidance on medication procedures for children.
 - (b) Guidance on Psychosurgery and Electroshock Therapy Procedures for Children.
 - (c) Guidance on Family Involvement.
 - (d) Guidance on Consumer Rights.

R523-8-3. Definitions.

- (1) For the purposes of this administrative rule, "guardian" means a parent, and/or legal guardian, and/or legal custodian.
- (2) Neutral and Detached Fact Finder is as defined in Subsection 62A-15-703(3).
- (3) The "Division" is the Division of Substance Abuse and Mental Health (Division)
- (4) "Antipsychotic medication" means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.
- (5) A "legal custodian" is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.
- (6) A "legal guardian" is one who is appointed by a testamentary appointment or by a court of law.

R523-8-4. Medication Procedures for Children, Legal Authority.

- (1) The Division hereby establishes due process procedures for children prior to the administration of antipsychotic medication.
 - (a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division.
 - (b) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:
 - (i) The child and guardian give consent.
 - (ii) The child or the guardian does not give consent, but a Designated Examiner determines that antipsychotic medication is an appropriate treatment through a due process proceeding as described in Section 62A-15-704.
 - (iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to Subsection R523-8-4(1)(f) below.
 - (c) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with antipsychotic medications:
 - (i) The nature of the child's mental illness.
 - (ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.
 - (iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.
 - (iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.
 - (v) The possible side effects, if any, of the recommended treatment.
 - (vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

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

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

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

(d) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information under Subsection R523-8-4(1)(c), and that they consent to the proposed medication treatment.

(e) If either the child or guardian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with Subsection R523-8-4(1)(g).

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

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

(A) A statement by the physician that they believe the child is likely to cause injury to themselves or others if not immediately restrained and provided medication treatment.

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

(C) The medication administered.

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

(g) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of Subsection R523-8-4(1)(h).

(h) If the child or guardian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

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

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

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

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

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

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

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

(iv) The child, guardian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

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

(vi) If needed, the Neutral and Detached Fact Finder may ask everyone to leave the room to allow them time to deliberate.

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

(i) The child has a mental illness; and

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

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

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

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

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

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

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

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

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

(m) In the event that a significant medication change is proposed, the child and/or guardian shall be provided an opportunity to give consent in accordance to Subsection R523-8-4(1)(c) of this section. If the child and guardian refuse to give consent, a medication hearing may be initiated in accordance with Subsection R523-8-4(1)(h) of this section.

(n) Medication treatment ordered pursuant to Subsection R523-8-4(1)(h) of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if they find the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in their ability to function in the least restrictive environment, thereby making them a substantial danger to themselves or others, and

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

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

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, they shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or guardian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this Subsection R523-8-4(1)(n), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-8-5. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy.

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority or committed to the legal custody of the Division. The following terms are herein defined:

(b) "ECT" means electroconvulsive therapy.

(c) "Psychosurgery" means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(d) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with ECT or Psychosurgery:

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

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

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

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

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

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects;

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

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery; and

(ix) When informing a child and their guardian they have the right to withhold consent, the local mental health authority shall inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two Neutral and Detached Fact Finders to determine the appropriateness of such treatment.

(e) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in Subsection R523-8-5(1)(d) of this section, and that they consent or do not consent to the proposed treatment.

(f) If the guardian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(g) Regardless of whether the child or guardian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(h) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(i) Upon receipt of the request, the Director/Designee shall contact two Neutral and Detached Fact Finders, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(j) The child and guardian shall be provided notice of the hearing.

(k) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document their proposed course of treatment and reason(s) justifying the proposal in the medical record.

(l) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician. Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (guardian /foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the two Neutral and Detached Fact Finders may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, guardian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Neutral and Detached Fact Finders and the proposed treatment shall be discussed.

(v) The child, guardian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the two Neutral and Detached Fact Finders shall render a decision

(vii) If needed the two Neutral and Detached Fact Finders may ask everyone to leave the room to allow them time to deliberate.

(m) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

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

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either:

(A) a substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

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

(n) The basis for the decision shall be supported by adequate documentation. The Neutral and Detached Fact Finders shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or guardian.

(o) The child and/or guardian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Director/designee of the Division

within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(p) ECT or psychosurgery may be commenced within 48 hours of the decision by the Neutral and Detached Fact Finders, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Director/designee physician renders their affirmative decision.

(q) Upon receipt of a Request, the Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the guardian prior to the commencement of treatment.

(r) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in R523-8-5(1)(d) through (q) shall be followed before initiating further treatment.

R523-8-6. Family Involvement.

(1) Each mental health authority shall annually prepare and submit to the Division a plan for mental health funding and service delivery. Included in the plan shall be a method to educate families concerning mental illness and substance use disorders to promote family involvement when appropriate, and with patient consent, in the services of a family member.

(2) The Division will monitor for compliance as part of the annual quality of care site visits.

R523-8-7. Consumers Rights.

(1) Each LMHA and LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) Consumer involvement in treatment planning.

(b) Consumer involvement in selection of their primary therapist.

(c) Consumer access to their individual treatment records.

(d) Informed consent regarding medication

(e) Grievance procedures

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

R523-8-8. Declaration for Mental Health Treatment.

(1) The Division will make available information concerning the declaration for mental health treatment. Included will be information concerning available assistance in completing the document.

(2) Each LMHA shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake.

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

KEY: forced medication hearings and treatment procedures for children, due process, family involvement, consumer rights

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, Implemented or Interpreted Law: 62A-15-105; 62A-15-703(3); 62A-15-704

**Human Services, Substance Abuse
and Mental Health
R523-9
Evidence-Based Prevention Registry**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39875

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule defines evidence-based prevention and evidence-informed prevention and prescribes standards for listing a prevention program or intervention on a statewide registry of evidence-based prevention programs. (DAR NOTE: The proposed repeal is of Rule R523-8 under DAR No. 39874 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on: 1) requirements for listing on the statewide registry of evidence-based programs; and 2) the Division of Substance Abuse and Mental Health (DSAMH) review process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32B-2-402(1)(f)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-8, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because this rule replaces a repealed rule, R523-8, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule replaces a repealed rule, R523-8, that was repealed in order

to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-8, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because this rule replaces a repealed rule, R523-8, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses because this rule replaces a repealed rule, R523-8, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-9. Evidence-Based Prevention Registry.

R523-9-1. Purpose and Statutory Authority.

(1) Purpose. This rule defines evidence-based prevention and evidence-informed prevention and prescribes standards for listing a prevention program or intervention on a statewide registry of evidence-based prevention programs.

(2) Statutory Authority. These definitions and standards are promulgated by the Utah Department of Human Services through the

Division of Substance Abuse and Mental Health (DSAMH) as authorized by Subsection 32B-2-402(1)(f).

(3) Intent. The objective of this rule is to decrease the harmful effects of substance use through implementation of evidence-based and evidence-informed prevention.

R523-9-2. Definitions.

(1) Evidence-based prevention includes programs, activities and strategies (hereinafter referred to as "interventions") that:

(a) Are included in private or federal registries that identify evidence-based interventions proven to result in sustained positive benefits to individuals or communities.

(b) Have been reported in peer-reviewed journals and with demonstrated positive effects on the primary targeted outcome; or

(c) Have documented effectiveness supported by other sources of information and the consensus judgment of informed experts, and meet the following criteria:

(i) The intervention is based on a theory of change that is documented in a clear logic or conceptual model; and

(ii) The intervention is similar in content and structure to interventions that appear in registries and/or the peer-reviewed literature; and

(iii) The intervention is supported by documentation that it has been effectively implemented in the past, and multiple times, in a manner attentive to scientific standards of evidence and with results that show a consistent pattern of credible and positive effects; and

(iv) The intervention is reviewed and deemed appropriate by the Division of Substance Abuse and Mental Health.

(2) Evidence-informed prevention includes programs, activities and strategies (hereinafter referred to as "interventions"):

(a) With documented effectiveness supported by other sources of information and the consensus judgment of informed experts; and

(b) Have been reviewed by the DSAMH and determined to meet the criteria for listing on Utah's Statewide Registry of Evidence-based Programs.

R523-9-3. Requirements For Listing On the Statewide Registry of Evidence-Based Programs.

(1) The DSAMH shall develop and publish a statewide registry of evidence-based prevention interventions. This registry should be made available to the public in print and electronic formats.

(2) The DSAMH shall develop and make available registry application forms that include guidance on the documentation needed for review by DSAMH to the public in print and electronic formats.

(3) Only programs/interventions determined to be evidence-based in accordance with the definition in this rule shall be listed on the registry upon completion of an application and required forms.

(4) The registry shall at a minimum include contact information for key staff, a short program description, identification of the target population, and identify the long-term goals.

(5) Programs/interventions shall annually submit an application with a DSAMH approved logic model for continued listing on the registry.

R523-9-4. DSAMH Review Process.

(1) The DSAMH shall create an Evidence-based Prevention workgroup comprised of informed prevention experts to review programs that includes:

(a) At least one Doctorate level social scientist with at least three years experience evaluating prevention interventions similar to those under review;

(b) At least one urban prevention practitioner;

(c) One rural prevention practitioner;

(d) One representative from the Utah Substance Abuse Advisory Council;

(e) A representative from public health;

(f) DSAMH prevention staff; and

(g) Other members as needed.

(2) The Evidence-based Prevention Workgroup shall review all submissions to DSAMH and make recommendations to the DSAMH Division Director regarding whether the submission should be listed on the Statewide Registry of Evidence-based Programs.

(3) Programs for which the Evidence-based Workgroup determines do not meet the criteria for inclusion on the Statewide Registry of Evidence-Based Programs shall receive a written explanation of the decision and recommendations for the intervention that would improve the likelihood of meeting the requirements for listing on the registry.

KEY: evidence-based prevention; statewide registry; evidence-based prevention workgroup

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 32B-2-402(1)(f)

**Human Services, Substance Abuse
and Mental Health
R523-10
Standards for Methadone Addiction
Treatment Providers**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39877

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule establishes standards for providers of methadone and other opioid treatment medication services. (DAR NOTE: The proposed repeal is of Rule R523-21 under DAR No. 39876 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on state and federal requirements for treatment providers who use methadone and other opioid treatment medications. It also provides guidance on the division's duties in monitoring methadone treatment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Part 8 and Section 62A-15-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-21, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because this rule replaces a repealed rule, R523-21, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to the small businesses because this rule replaces a repealed rule, R523-21, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to the persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-21, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because this rule replaces a repealed rule, R523-21, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule, R523-21, that was repealed in order to clarify guidance, correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.**R523-10. Standards for Methadone Addiction Treatment Providers.****R523-10-1. Statutory Authority.**

The Division of Substance Abuse and Mental Health under the authority granted to it by Section 62A-15-105, establishes the following standards for providers of methadone and other opioid treatment medication services.

R523-10-2. Regulatory Compliance for Methadone Providers.

(1) All Substance Abuse providers, contractors or licensed persons who dispense methadone or other opioid treatment medications shall:

(a) Comply with all Federal regulations, including 42 CFR Part 8;

(b) Comply with all State, and Local requirements regulating licensing for the purchasing, possession, distribution, and dispensing of methadone or other opioid treatment medications;

(c) Comply with all requirements of licensed substance abuse treatment programs; and

(d) Comply with the requirements of the Utah Department of Human Services "Provider Code of Conduct".

R523-10-3. Division Duties in Monitoring Methadone Treatment.

(1) The Division of Substance Abuse and Mental Health, in consultation with, and receiving input from the licensed Opioid Treatment Providers (OTPs) in the state, shall:

(a) Conduct regular meetings of the licensed OTPs in the state;

(b) Work with licensed OTPs and other agencies as necessary to preclude dual enrollments of clients;

(c) Disseminate current research and information pertaining to opioid treatment;

(d) Review and act on Exemption Requests to Federal Take Home regulations in accordance with 42 CFR Part 8; and

(e) Develop and promulgate a protocol for take home exceptions for long distance clients in conjunction with the Center for Substance Abuse Treatment's Division of Pharmacologic Therapies and the licensed OTPs with the state.

KEY: methadone programs

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-105

**Human Services, Substance Abuse
and Mental Health**
R523-11
**Utah Standards for Approval of Alcohol
and Drug Educational Providers and
Instructors for Court-Referred DUI
Offenders**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39880

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule prescribes standards for approval of providers and certification of instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation. (DAR NOTE: The proposed repeal is of Rule R523-22 under DAR No. 39878 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provide guidance on: 1) certification requirements for DUI educational providers; 2) on-site survey of provider; 3) instructor certification; 4) recertification of instructors; 5) corrective action for a provider or an instructor; 6) revocation of a provider's or an instructor's certification; 7) redress procedures for programs or instructors; and 8) standards for victim impact panels.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Chapter 1, Subchapter A Part 2 and Section 17-43-201 and Section 41-6a-502 and Section 41-6a-510 and Section 41-6a-528 and Section 62A-15-103 and Section 62A-15-105 and Section 63G-4-302 and Section 73-18-12 and Section 76-5-207 and Sections 62A-15-501 through 62A-15-503

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-22, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because this rule replaces a repealed rule, R523-22, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule replaces a repealed rule, R523-22, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-22, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because this rule replaces a repealed rule, R523-22, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule, R523-22, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-11. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders.

R523-11-1. Purpose and Statutory Authority.

(1) Purpose. This rule prescribes standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-502, 41-6a-510, 41-6a-528, and 73-18-12.

(2) Statutory Authority. This rule is promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501 through 503 and 76-5-207.

(3) Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the participant examine the behavior that led to the arrest, (b) assist the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon the participant the severity of the DUI offense.

R523-11-2. Definitions.

(1) "DUI Educational Program" herein referred to as "Program" is an instructional series offered by a licensed substance abuse treatment Provider agency which satisfies the standards established by the Division.

(2) "Provider" is a licensed substance abuse treatment agency that has been approved to offer DUI Education.

(3) "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

(4) "Certificate" is a written authorization issued by the Division to indicate that the Provider agency has been found to be in compliance with these Division standards and may offer DUI Education.

(5) "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

(6) "Instructor" is a person employed by a Provider who has been certified by the Division to instruct the state approved education course for a court-referred participant convicted of DUI.

(7) "Participant" is a person attending DUI Education classes as a result of a DUI conviction or arrest. This person has received a screening which indicated education is appropriate.

(8) "Victim Impact Panel". A presentation designed to reflect the principles taught in the educational program that helps participants understand the potential impact on others of driving under the influence.

R523-11-3. Certification Requirements for DUI Educational Providers.

(1) In order to operate, a potential DUI Educational Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

(2) Application for certification shall require the following:

(a) A brief description and purpose of the agency, and an explanation of the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

(b) The geographical area to be served;

(c) The ownership and person or group responsible for agency operation;

(d) The location and time that DUI classes would normally be held;

(e) A list of instructors employed by the agency; and

(f) A copy of their substance abuse treatment license.

(g) An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

(h) Copies of all materials, i.e., presentations, workbooks, written documents, photographs used in the presentation or distributed to participants during victim impact panels shall be submitted to the Division for approval prior to use.

(i) A written plan that describes goals, objectives and format of in person victim impact panels to the Division for approval prior to use.

(3) A DUI Educational Provider shall also:

(a) Ensure that each participant receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;

(b) Allow no more than 25 persons, including participant and others to a class;

(c) Follow the recommendations of the screening which has been provided;

(d) Ensure that screenings are conducted by staff from a licensed treatment agency who have been trained in administering the screening tool;

(e) Report the number of participants completing the DUI Educational Program to the Division at least every quarter;

(f) Have policies ensuring confidentiality of information maintained on each participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Subchapter A Part 2;

(g) Ensure that Instructors follow the Division-approved curriculum;

(h) Have available for review a copy of the Provider's charter, constitution, or bylaws;

(i) Outline the eligibility criteria for admission to the program, including the screening tool used;

(j) Ensure that all Instructors employed by the Provider have completed the Division required DUI training/certification;

(k) Inform the Division of any licensing or address change;

(l) Comply with all applicable local, state and federal laws and regulations.

(m) Ensure that none of the Instructors are on probation or parole for any offense;

(n) Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years;

(o) Notify the Division in writing within 30 days if any Instructor has been arrested for any reason;

(p) Provide separate classes for participants who are younger than 21 years of age at the completion of the course; and

(4) Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants.

(5) A participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by an assessment.

(6) The Division shall issue the Provider a certificate after determination has been made that the applicant is in compliance with these standards.

(7) The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-11-4. On-site Survey of Provider.

(1) After a review of the application, a site review may be scheduled by a designated representative of the Division. With each

initial application and application for renewal the applicant agrees, as a condition of Provider certification, to permit representative(s) of the Division and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws.

(2) The DUI Educational Provider also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) Review Procedures. Within 30 days after completion of an on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-11-5. Instructor Certification.

(1) By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

(a) All Instructors employed by any DUI Educational Provider shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational Provider.

(b) All Instructors shall attend and complete the requirements of the Instructor training sponsored by the Division.

(c) Requirements in R523-11-5(a) and (b) above shall be complete and verifiable.

(d) The Instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a DUI Educational Program.

(e) The Instructor agrees to attend all required DUI training sessions sponsored or approved by the Division.

(f) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(g) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(h) A Certified Instructor shall notify the Division within 30 days of any arrest.

R523-11-6. Recertification of Instructors.

(1) An Instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The Instructor shall sign a register at those training sessions which have been set aside for DUI Instructor recertification.

(2) It is the responsibility of the Instructor to notify the Division immediately of any address change.

(3) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(4) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(5) If a current Instructor is arrested, he or she has 30 days to report the arrest to the Division.

(6) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-11-7. Corrective Action for a Provider or an Instructor.

(1) If the Division becomes aware that a DUI education Provider or an Instructor is in violation of these standards, it shall proceed with the following steps:

(a) Within 30 days of becoming aware of the violation, the Division shall notify the Provider or the Instructor in writing of the area(s) of noncompliance.

(b) Within 30 days of receiving notification of violation, the program or the Instructor shall submit a written plan to the Division for achieving compliance.

(c) If the written plan is not accepted as satisfactory by the Division within 30 days the Provider or the Instructor shall be notified that they have been suspended until compliance is achieved.

(d) A Provider or an Instructor must cease conducting any DUI Educational Provider until the suspension is lifted.

(e) If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the Provider or Instructor's certification.

R523-11-8. Revocation of a Provider's or an Instructor's Certification.

(1) The Division shall revoke the certification of a Provider or an Instructor for the following reasons:

(a) If the Provider or the Instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

(b) If the Provider or the Instructor continues to provide any DUI Education during the period of suspension, or

(c) If any Provider or Instructor receives more than two notices of noncompliance with these standards in a one-year period.

(2) If any Provider or Instructor's certification is revoked, they may not reapply for recertification for a period of six months.

R523-11-9. Redress Procedures for Programs or Instructors.

(1) Any Provider or Instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the Provider or the Instructor in writing of the decision as required under Section 63G-4-302 and R497-100-1 through R497-100-10.

(2) If they so choose, the Provider or the Instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under Section 63G-4-302.

R523-11-10. Standards for Victim Impact Panels.

(1) Victim impact panels may be conducted in person or by use of filmed versions approved by the Division.

(2) Providers shall ensure that victim impact panels are available in English, Spanish and other languages as needed.

(3) Providers shall limit attendance at victim impact panels to no more than 25 participants.

KEY: DUI programs, certification of instructors

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, Implemented or Interpreted Law: 17-43-201; 41-6a-502; 41-6a-510; 41-6a-528; 62A-15-103; 62A-15-105; 62A-15-501 through 503; 63G-4-302; 73-18-12; 76-5-207, 42 CFR Chapter 1 Subchapter A Part 2

**Human Services, Substance Abuse
and Mental Health
R523-12
On-Premise Alcohol Training and
Education Seminar Rules of
Administration**

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 39882
FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides guidance on the training of on-premise alcohol servers, as well as the certification of those who provide this training. (DAR NOTE: The proposed repeal is of Rule R523-23 under DAR No. 39881 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provides guidance on: 1) provider certification application procedure; 2) provider responsibilities; 3) server responsibilities; 4) division responsibilities; 5) approved curriculum; 6) examination; 7) alcohol training and education seminar provider standards; 8) grounds for denial, corrective action, suspension, and revocation; 9) corrective action; 10) suspension and revocation; and 11) procedure for denial, suspension, or revocation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-401 and Section 63G-4-203

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-23, that was repealed in order to correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.
- ◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because this rule replaces a repealed rule, R523-23, that was repealed in order to correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.
- ◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule replaces a repealed rule, R523-23, that was repealed in order to correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-23,

that was repealed in order to correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons because this rule replaces a repealed rule, R523-23, that was repealed in order to correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses because this rule replaces a repealed rule, R523-23, that was repealed in order to correct typographical errors, remove unnecessary text, and reorganize the numbering system of the division's rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

**R523. Human Services, Substance Abuse and Mental Health.
R523-12. On-Premise Alcohol Training and Education Seminar
Rules of Administration.**

- R523-12-1. Authority and Intent.**
- (1) This rule is adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health (Division) to administer the Alcohol Training and Education Seminar Program.
 - (2) The intent of this rule is to require every person who sells or furnishes alcoholic beverages to the public for on-premise consumption to complete a training seminar in the scope of the person's employment.
 - (3) This rule includes:
 - (a) Certification of providers;
 - (b) Approval of the Seminar curriculum;
 - (c) The ongoing activities of providers; and
 - (d) The process for approval, denial, suspension and revocation of provider certification.

R523-12-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager, if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-12-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-12-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the

training, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

R523-12-5. Server Responsibilities.

A server is required within 30 days of employment to pass the Seminar.

R523-12-6. Division Responsibilities.

The Division shall maintain the database of servers who have completed the seminar.

R523-12-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior;

- (i) Facts about alcohol;
- (ii) What alcohol is; and
- (iii) Alcohol's path through the body.
- (b) Factors influencing the effect of alcohol including:
 - (i) Food and digestive factors;
 - (ii) Weight, physical fitness and gender factors;
 - (iii) Psychological factors;
 - (iv) Tolerance; and
 - (v) Alcohol used in combination with other drugs.
- (c) Recognizing drinking levels:
 - (i) Explanation of behavioral signs and indications of impairment;
 - (ii) Classification of behavioral signs; and
 - (iii) Defining intoxication.
- (d) Recognizing the problem drinker and techniques for servers to help control consumption:
 - (i) Use of classification system;
 - (ii) Use of alcohol facts;
 - (iii) Continuity of service; and
 - (iv) Drink counting.
- (e) Overview of state alcohol laws:
 - (i) Utah liquor distribution and control;
 - (ii) Legal age;
 - (iii) prohibited sales;
 - (iv) Third party liability and the Dram Shop Law;
 - (v) Legal definition of intoxication; and
 - (vi) Legal responsibilities of servers.
- (f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.
 - (g) Intervention techniques:
 - (i) Slowing down service;
 - (ii) Offering food or nonalcoholic beverages;
 - (iii) Serving water with drinks;
 - (iv) Not encouraging reorders; and
 - (v) Cutting off service.
 - (h) Establishing house rules for regulating alcoholic beverages:
 - (i) Management and co-workers' support; and
 - (ii) Dealing with minors; and
 - (i) Alternative means of transportation and getting the customer home safely:
 - (i) ask customer to arrange alternative transportation;
 - (ii) Call a taxi or transportation service;
 - (iii) Accommodations for the night; and
 - (iv) Telephone the police.

R523-12-8. Examination.

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

R523-12-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

- (a) Does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;
- (b) Identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;
- (c) Agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-12-9(1)(b) for all new instructors;
- (d) Will establish and maintain course completion records.
- (2) All online training courses shall be provided on a secure website.

R523-12-10. Grounds for Denial, Corrective Action, Suspension, and Revocation.

- (1) The Division may deny, suspend or revoke certification if:
 - (a) The provider or applicant violates these rules, as provided in Section 62A-15-401; or
 - (b) The applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or
 - (c) A provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-12-11. Corrective Action.

- (1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:
 - (a) Within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider; and
 - (b) Within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-12-12. Suspension and Revocation.

- (1) The Director or designee may suspend the certification of a provider as follows:
 - (a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.
 - (b) When a provider fails to take corrective action as agreed upon in its written response to the Division.
 - (c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.
- (2) The Director or designee may revoke certification of a provider as follows:
 - (a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.
 - (b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-12-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: substance abuse, server training, on-premise

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-401; 63G-4-203

**Human Services, Substance Abuse
and Mental Health
R523-13
Off Premise Retailer (Clerk, Licensee
and Manager) Alcohol Training and
Education Seminar Rules of
Administration**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39884

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides guidance on the training of off-premise alcohol servers, as well as the certification of those who provide this training. (DAR NOTE: The proposed repeal is of Rule R523-24 under DAR No. 39883 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule is to provide guidance on: 1) provider certification application procedure; 2) provider responsibilities; 3) retail employee responsibilities; 4) division responsibilities; 5) approved curriculum; 6) examination; 7) alcohol training and education

seminar provider standards; 8) grounds for denial, corrective action, suspension, and revocation; 9) corrective action; 10) suspension and revocation; and 11) procedure for denial, suspension, or revocation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-401 and Section 63G-4-203

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because this rule replaces a repealed rule, R523-24, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because this rule replaces a repealed rule, R523-24, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this rule replaces a repealed rule, R523-24, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule replaces a repealed rule, R523-24, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because this rule replaces a repealed rule, R523-24, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule replaces a repealed rule, R523-24, that was repealed in order to correct typographical errors and reorganize the numbering system of the division's rules.

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

HUMAN SERVICES

SUBSTANCE ABUSE AND MENTAL HEALTH

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-13. Off-Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-13-1. Authority and Intent.

(1) This rule is adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health (Division) to administer the Alcohol Training and Education Seminar Program.

(2) The intent of this rule is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for off-premise consumption in the scope of the person's employment with a general food store or similar business.

(3) These rules include:

(a) Curriculum content standards.

(b) Seminar provider standards.

(c) Provider certification process;

(d) The ongoing activities of providers, and

(e) The process for approval, denial, suspension and revocation of provider certification.

R523-13-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "Provider" means an individual or company who has had their curriculum approved and certified by the Division.

(7) "Seminar" means the Off-Premise Alcohol Training and Education Seminar.

(8) "Supervisor" means an employee who, under the direction of a manager, if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually sell or furnish alcoholic beverages to customers for off-premise consumption.

(9) "Retail employee" (clerk or supervisor) means any person employed by a general food store or similar business and who is engaged in the sale of or directly supervises the sale of beer to consumers for off-premise consumption.

R523-13-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a non-certified provider shall not meet the retailer training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application and curriculum, and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information, and notification of the action taken shall be forwarded in writing to the applicant. If an application for recertification requires additional information or corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-13-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) Provide technical support, such as a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) Issue a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) Track the internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) Provide an individual who takes an online course or test the opportunity to use an e-signature; or

R523-13-5. Retail Employee Responsibilities.

A retail employee is required within 30 days of employment by a general food store or similar business to complete and pass the Seminar.

R523-13-6. Division Responsibilities.

The Division shall maintain the database of retail employees who have completed the Seminar and make this information available to the public.

R523-13-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug;

(b) Alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain, which information shall be provided by the Division;

(c) Recognizing the problem drinker or signs of intoxication;

(d) Statistics identifying the underage drinking problem, which information provided by the Division;

(e) Discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and intoxicated persons;

(f) Strategies commonly used by minors to gain access to alcohol;

(g) Process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(h) Policies and procedures to prevent beer purchases by intoxicated individuals;

(i) Techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play; and

(j) Recognition of beverages containing alcohol including examples of such beverages.

R523-13-8. Examination.

The examination shall include questions from each of the curriculum components identified in Section R523-13-7. The examination shall be submitted for approval with the rest of the provider application.

R523-13-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify a provider applicant who:

(a) Identifies all program instructors and instructor trainers and certifies in writing that they:

(i) Have been trained to present the course material, and

(ii) That they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the past five years;

(b) Agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-13-9(a) for all new instructors;

(c) Allow the Division to audit all online courses or tests at any time the Division requests;

(d) Agrees to invalidate a course completion certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test;

(e) Will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-13-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) The provider or applicant violates these rules, or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) A provider whose certification has been previously denied, suspended or revoked and has reapplied without correcting the problem that resulted in the denial, suspension or revocation.

R523-13-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) Within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.

(b) Within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-13-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to address areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the Seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-13-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director, or the Director's designee, within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: off-premises, training, seminars, alcohol
Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: 62A-15-401; 63G-4-203

**Human Services, Substance Abuse
 and Mental Health
 R523-14
 Suicide Prevention**

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 39885
 FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish requirements governing implementation of the state suicide prevention program. This rule is in response to the requirement of H.B. 364 passed during the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule establishes a requirement for the division to gather input from the identified community partners on an annual basis.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-1101(8)

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: There will be no cost or saving to the state budget since this process is already in place.

- ♦ LOCAL GOVERNMENTS: There will be no cost or saving to local government since this process is already in place.
- ♦ SMALL BUSINESSES: There will be no cost or saving to small businesses since this process is already in place.
- ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no cost or saving to persons other than small businesses, businesses, or local government entities since this process is already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons since this process is already in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Division of Substance Abuse and Mental Health has a practice of gathering input from the the Utah Suicide Prevention Coalition and the Utah Behavioral Health Planning and Advisory Council on a regular basis since this project was created by the legislature, therefore, this rule will not have a fiscal impact on businesses.

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

HUMAN SERVICES
 SUBSTANCE ABUSE AND MENTAL HEALTH
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov
 ♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

R523-14. Suicide Prevention.

R523-14-1. Statutory Authority.

Statutory Authority. This rule is promulgated by the State of Utah, Department of Human Services, Division of Substance Abuse and Mental Health (division) as authorized by Subsection 62A-15-1101(8).

R523-14-2. Requirements Governing Implementation of the State Suicide Prevention Plan.

In order to implement a state suicide prevention strategy, the division will provide opportunity for the Utah Suicide Prevention Coalition and the Utah Behavioral Health Planning and

Advisory Council to provide input on current community needs and current best practices for suicide prevention activities on a minimum of a yearly basis.

KEY: suicide prevention

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 62A-15-1101

**Human Services, Substance Abuse
and Mental Health
R523-20
Division Rules of Administration**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39873

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to: 1) the division's reorganization of their rules; and 2) the edits needed to be made to the text of the rule. (DAR NOTE: The proposed new rule is Rule R523-1 under DAR No. 39860 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule: 1) established a continuum of substance abuse standards; 2) clarified funding for Medical detoxification programs; and 3) established the Addiction Severity Index as the instrument used for determining a persons severity of substance abuse.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--This rule will be replaced by a new rule, R523-1, that adds definitions and clarifies guidance provided.

◆ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule, R523-1, that adds definitions and clarifies guidance provided.

◆ SMALL BUSINESSES: None--This rule will be replaced by a new rule, R523-1, that adds definitions and clarifies guidance provided.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule, R523-1, that adds definitions and clarifies guidance provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-1, that adds definitions and clarifies guidance provided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since this rule is being repealed so that it can be replaced by a new rule, R523-1, that adds definitions and clarifies guidance provided, there will not be any fiscal impact to businesses.

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

HUMAN SERVICES

SUBSTANCE ABUSE AND MENTAL HEALTH

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

[R523-20. Division Rules of Administration.

R523-20-1. Authority.

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

R523-20-2. Purpose.

~~_____ (1) The purpose of this rule is to:~~

~~_____ (a) establish a continuum of substance abuse standards;~~

~~_____ (b) clarify funding for Medical detoxification programs; and~~

~~_____ (c) establish the Addiction Severity Index as the instrument used for determining a persons severity of substance abuse.~~

R523-20-5. Continuum of Services.

~~_____ (1) Prevention means a proactive comprehensive program which provides a broad array of activities and services designed to discourage the use of alcohol, tobacco and other drugs directed at individuals who have not been identified to be in need of treatment. These activities and services must be provided in a variety of settings for both the general population as well as targeted subgroups who are at high risk for substance abuse.~~

~~_____ (2) Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned abuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing~~

~~standards (Rule R501-2-5B) as adopted by the Division of Substance Abuse and Mental Health, is maintained.~~

R523-20-6. Funding of Medical Detoxification Programs.

~~(1) Medical detoxification programs shall not be funded by the Division on an ongoing basis.~~

R523-20-11. Use of Standard Criteria.

~~(1) All contractors and subcontractors must conduct a thorough bio-psycho-social-cultural assessment of each client to determine the degree of severity of their substance abuse problem. This assessment must evaluate the client's status in a minimum of the following dimensions:~~

- ~~(a) substance abuse status;~~
- ~~(b) treatment history;~~
- ~~(c) legal status;~~
- ~~(d) educational and employment status;~~
- ~~(e) family and social status;~~
- ~~(f) mental health/psychiatric status;~~
- ~~(g) cultural status; and~~
- ~~(h) readiness to change.~~

~~(2) The placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the placement criteria developed by the American Society of Additive Medicine (ASAM).~~

~~(3) Documentation of the use of ASAM placement criteria must be included in each patient's record.~~

KEY: ~~substance abuse, financing of programs, service continuum, assessment instruments~~

Date of Enactment or Last Substantive Amendment: ~~July 12, 2011~~

Notice of Continuation: ~~June 5, 2012~~

Authorizing, and Implemented or Interpreted Law: ~~62A-15-105(5)]~~

Human Services, Substance Abuse
and Mental Health

R523-21

Division of Substance Abuse and
Mental Health Rules

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39876

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to: 1) the division's reorganization of its rules; and 2) the edits needed to be made to the text of the rule. It will be replaced with a new rule that is renumbered and edited. (DAR NOTE: The proposed new rule is Rule R523-10 under DAR No. 39877 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule prescribed standards for providers of methadone and other opioid treatment medication services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--This rule will be replaced by a new rule, R523-10, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule, R523-10, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ SMALL BUSINESSES: None--This rule will be replaced by a new rule, R523-10, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule, R523-10, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-10, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is not a fiscal impact on businesses because this rule will be replaced by a new rule, R523-10, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.**[~~R523-21. Division of Substance Abuse and Mental Health Rules.~~****~~R523-21-1. Rules Governing Methadone Providers.~~**

~~(1) The Division of Substance Abuse and Mental Health under the authority granted to it by Section 62A-15-105(5), establishes the following standards for providers of methadone and other opioid treatment medication services.~~

~~(2) All Substance Abuse providers, contractors or licensed persons who dispense methadone or other opioid treatment medications shall:~~

~~(a) comply with all Federal regulations, including 42 CFR Part 8;~~

~~(b) comply with all State, and Local requirements regulating licensing for the purchasing, possession, distribution, and dispensing of methadone or other opioid treatment medications;~~

~~(c) comply with all requirements of licensed substance abuse treatment programs; and~~

~~(d) comply with the requirements of the Utah Department of Human Services "Provider Code of Conduct".~~

~~R523-21-2. Division Duties in Monitoring Methadone Treatment.~~

~~(1) The Division of Substance Abuse and Mental Health, in consultation with, and receiving input from the licensed Opioid Treatment Providers (OTPs) in the state, shall:~~

~~(a) conduct regular meetings of the licensed OTPs in the state;~~

~~(b) work with licensed OTPs and other agencies as necessary to preclude dual enrollments of clients;~~

~~(c) disseminate current research and information pertaining to opioid treatment;~~

~~(d) review and act on Exemption Requests to Federal Take Home regulations in accordance with 42 CFR Part 8; and~~

~~(e) develop and promulgate a protocol for take home exceptions for long distance clients in conjunction with the Center for Substance Abuse Treatment's Division of Pharmacologic Therapies and the licensed OTPs with the state.~~

~~KEY: methadone programs~~

~~Date of Enactment or Last Substantive Amendment: January 20, 2010~~

~~Notice of Continuation: March 30, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 62A-15-105(5)~~

Human Services, Substance Abuse
and Mental Health
R523-22
Utah Standards for Approval of Alcohol
and Drug Educational Providers and
Instructors for Court-Referred DUI
Offenders

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39878

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of its rules. (DAR NOTE: The proposed new rule is Rule R523-11 under DAR No. 39880 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule prescribed standards for approval of providers and certification of instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 17-43-201 and Section 41-6a-502 and Section 41-6a-510 and Section 41-6a-528 and Section 62A-15-103 and Section 62A-15-105 and Section 63G-4-302 and Section 73-18-12 and Section 76-5-207 and Sections 62A-15-501 through 62A-15-503

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This rule will be replaced by a new rule, R523-11, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

◆ **LOCAL GOVERNMENTS:** None--This rule will be replaced by a new rule, R523-11, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

◆ **SMALL BUSINESSES:** None--This rule will be replaced by a new rule, R523-11, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule will be replaced by a new rule, R523-11, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-11, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule will be replaced by a new rule, R523-11, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH

195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov
 ♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
[R523-22. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders.

R523-22-1. Purpose and Statutory Authority.

1. Purpose. These rules prescribe standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501 through 503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the participant examine the behavior that led to the arrest, (b) assist the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon the participant the severity of the DUI offense.

R523-22-2. Definitions as Used in These Standards.

1. "DUI Educational Program" herein referred to as Program is an instructional series offered by a licensed substance abuse treatment Provider agency which satisfies the standards established by the Division.

2. "Provider" is a licensed substance abuse treatment agency that has been approved to offer DUI Education.

3. "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

4. "Certificate" is a written authorization issued by the Division to indicate that the Provider agency has been found to be in compliance with these Division standards and may offer DUI Education.

5. "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

6. "Instructor" is a person employed by a Provider who has been certified by the Division to instruct the state approved education course for court-referred participant convicted of DUI.

7. "Participant" is a person attending DUI Education classes as a result of a DUI conviction or arrest. This person has received a screening which indicated Education is appropriate.

8. "Victim Impact Panel". A presentation designed to reflect the principles taught in the educational program that helps participants understand the potential impact on others of driving under the influence.

R523-22-3. Certification Requirements for DUI Educational Providers.

1. In order to operate, a potential DUI Educational Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification shall require the following:

a. A brief description and purpose of the agency, and an explanation of the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

b. The geographical area to be served;

c. The ownership and person or group responsible for agency operation;

d. The location and time that DUI classes would normally be held;

e. A list of instructors employed by the agency; and

f. A copy of their substance abuse treatment license.

g. An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

h. Copies of all materials, i.e. presentations, workbooks, written documents, photographs used in the presentation or distributed to participants during victim impact panels shall be submitted to the Division for approval prior to use.

i. A written plan that describes goals, objectives and format of in person victim impact panels to the Division for approval prior to use.

3. A DUI Educational Provider shall also:

a. Ensure that participant receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;

b. Allow no more than 25 persons, including participant and others to a class;

c. Follow the recommendations of the screening which has been provided;

d. Ensure that screenings are conducted by staff from a licensed treatment agency who have been trained in administering the screening tool;

e. Report the number of participant completing the DUI Educational Program to the Division at least every quarter;

f. Have policies ensuring confidentiality of information maintained on participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;

- ~~g. Ensure that Instructors follow the Division-approved curriculum;~~
- ~~h. Have available for review a copy of the Provider's charter, constitution, or bylaws;~~
- ~~i. Outline the eligibility criteria for admission to the program, including the screening tool used;~~
- ~~j. Ensure that all Instructors employed by the Provider have completed the Division required DUI training/certification;~~
- ~~k. Inform the Division of any licensing or address change;~~
- ~~l. Comply with all applicable local, state and federal laws and regulations;~~
- ~~m. Ensure that none of the Instructors are on probation or parole for any offense;~~
- ~~p. Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years;~~
- ~~q. Notify the Division in writing within 30 days if any Instructor has been arrested for any reason;~~
- ~~r. Provide separate classes for participants who are younger than 21 years of age at the completion of the course; and~~
- ~~4. Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants;~~
- ~~5. An participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by an assessment;~~
- ~~6. The Division shall issue the Provider a certificate after determination has been made that the applicant is in compliance with these standards;~~
- ~~7. The Division Director has the authority to grant exceptions to any of the certification requirements;~~

R523-22-4. On-site Survey of Provider:

- ~~1. After a review of the application, a site review may be scheduled by a designated representative of the Division. With each initial application and application for renewal the applicant agrees, as a condition of Provider certification, to permit representative(s) of the Division, and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws;~~
- ~~2. The DUI Educational Provider also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced;~~
- ~~3. Review Procedures. Within 30 days after completion of an on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information;~~

R523-22-5. Instructor Certification:

- ~~1. By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

 - ~~a. All Instructors employed by any DUI Educational Provider shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational Provider;~~
 - ~~b. All Instructors shall attend and complete the requirements of the Instructor training sponsored by the Division;~~
 - ~~c. Requirements in A and B above shall be complete and verifiable;~~~~

- ~~d. The Instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a DUI Educational Provider;~~
- ~~e. The Instructor agrees to attend all required DUI training sessions sponsored or approved by the Division;~~
- ~~f. An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense;~~
- ~~g. An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years;~~
- ~~h. A Certified Instructor shall notify the Division within 30 days of any arrest;~~

R523-22-6. Recertification of Instructors:

- ~~1. An Instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The Instructor must sign a register at those training sessions which have been set aside for DUI Instructor recertification;~~
- ~~2. It is the responsibility of the Instructor to notify the Division immediately of any address change;~~
- ~~3. An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense;~~
- ~~4. An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years;~~
- ~~5. If a current Instructor is arrested, he or she has 30 days to report the arrest to the Division;~~
- ~~6. The Division Director or designee has the authority to grant exceptions to any of the certification requirements;~~

R523-22-7. Corrective Action for a Provider or an Instructor:

- ~~1. If the Division becomes aware that a DUI education Provider or an Instructor is in violation of these standards, it shall proceed with the following steps:

 - ~~a. Within 30 days of becoming aware of the violation, the Division shall notify the Provider or the Instructor in writing of the area(s) of noncompliance;~~
 - ~~b. Within 30 days of receiving notification of violation, the program or the Instructor shall submit a written plan to the Division for achieving compliance;~~
 - ~~c. If the written plan is not accepted as satisfactory by the Division within 30 days the Provider or the Instructor shall be notified that they have been suspended until compliance is achieved;~~
 - ~~d. A Provider or an Instructor must cease conducting any DUI Educational Provider until the suspension is lifted;~~
 - ~~e. If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the Provider or Instructor's certification;~~~~

R523-22-8. Revocation of a Provider's or an Instructor's Certification:

- ~~1. The Division shall revoke the certification of a Provider or an Instructor for the following reasons:

 - ~~a. If the Provider or the Instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension;~~
 - ~~b. If the Provider or the Instructor continues to provide any DUI Education during the period of suspension, or~~~~

- ~~c. If any Provider or Instructor receives more than two notices of noncompliance with these standards in a one-year period.~~
- ~~2. If any Provider or Instructor's certification is revoked, they may not reapply for recertification for a period of six months.~~

~~R523-22-9. Redress Procedures for Programs or Instructors.~~

- ~~1. Any Provider or Instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the Provider or the Instructor in writing of the decision as required under Section 63G-4-302 and R497-100-1 through R497-100-10.~~
- ~~2. If they so choose, the Provider or the Instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under Section 63G-4-302.~~

~~R523-22-10. Standards for Victim Impact Panels.~~

- ~~1. Victim impact panels may be conducted in person or by use of filmed versions approved by the Division.~~
- ~~2. Providers shall ensure that victim impact panels are available in English, Spanish and other languages as needed.~~
- ~~3. Providers shall limit attendance at victim impact panels to no more than 25 participants.~~

~~**KEY: DUI programs, certification of instructors**
Date of Enactment or Last Substantive Amendment: December 15, 2014
Notice of Continuation: June 18, 2012
Authorizing, and Implemented or Interpreted Law: 17-43-201; 41-6a-502; 41-6a-510; 41-6a-528; 62A-15-103; 62A-15-105; 62A-15-501 through 503; 63G-4-302; 73-18-12; 76-5-207]~~

Human Services, Substance Abuse
 and Mental Health
R523-23
 On-Premise Alcohol Training and
 Education Seminar Rules of
 Administration

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 39881
 FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of its rules. (DAR NOTE: The proposed new rule is Rule R523-12 under DAR No. 39882 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule provided guidance on: 1) certification of providers; 2) approval of the seminar curriculum; 3) the ongoing activities of providers; and 4) the process for approval, denial, suspension, and revocation of provider certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Section 62A-15-401

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This rule will be replaced by a new rule, R523-12, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ LOCAL GOVERNMENTS: None--This rule will be replaced by a new rule, R523-12, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ SMALL BUSINESSES: None--This rule will be replaced by a new rule, R523-12, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule will be replaced by a new rule, R523-12, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-12, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is not a fiscal impact on businesses because this rule will be replaced by a new rule, R523-12, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

HUMAN SERVICES
 SUBSTANCE ABUSE AND MENTAL HEALTH
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.

[R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.

R523-23-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on-premise consumption in the scope of the person's employment.

(3) These rules include:

- (a) certification of providers;
- (b) approval of the Seminar curriculum;
- (c) the ongoing activities of providers; and
- (d) the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider administered and Division approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that the an individual accurately identifies the individual as taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

~~(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;~~

~~(i) An individual who takes an online course or test to use an e-signature; or~~

~~(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.~~

R523-23-5. Server Responsibilities.

~~A server is required within 30 days of employment to pass the Seminar.~~

R523-23-6. Division Responsibilities.

~~The Division shall maintain the database of servers who have completed the seminar.~~

R523-23-7. Approved Curriculum.

~~(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:~~

~~(a) Alcohol as a drug and its effect on the body and behavior:~~

~~(i) facts about alcohol;~~

~~(ii) what alcohol is; and~~

~~(iii) alcohol's path through the body.~~

~~(b) Factors influencing the effect of alcohol including:~~

~~(i) food and digestive factors;~~

~~(ii) weight, physical fitness and gender factors;~~

~~(iii) psychological factors;~~

~~(iv) tolerance; and~~

~~(v) alcohol used in combination with other drugs.~~

~~(c) Recognizing drinking levels:~~

~~(i) explanation of behavioral signs and indications of impairment;~~

~~(ii) classification of behavioral signs; and~~

~~(iii) defining intoxication.~~

~~(d) Recognizing the problem drinker and techniques for servers to help control consumption:~~

~~(i) use of classification system;~~

~~(ii) use of alcohol facts;~~

~~(iii) continuity of service; and~~

~~(iv) drink counting.~~

~~(e) Overview of state alcohol laws:~~

~~(i) Utah liquor distribution and control;~~

~~(ii) legal age;~~

~~(iii) prohibited sales;~~

~~(iv) third party liability and the Dram Shop Law;~~

~~(v) legal definition of intoxication; and~~

~~(vi) legal responsibilities of servers.~~

~~(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques:~~

~~(g) Intervention techniques:~~

~~(i) slowing down service;~~

~~(ii) offering food or nonalcoholic beverages;~~

~~(iii) serving water with drinks;~~

~~(iv) not encouraging reorders; and~~

~~(v) cutting off service.~~

~~(h) Establishing house rules for regulating alcoholic beverages:~~

~~(i) management and co-workers' support; and~~

~~(ii) dealing with minors; and~~

~~(i) Alternative means of transportation and getting the customer home safely:~~

~~(i) ask customer to arrange alternative transportation;~~

~~(ii) call a taxi or transportation service;~~

~~(iii) accommodations for the night; and~~

~~(iv) telephone the police.~~

R523-23-8. Examination.

~~The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.~~

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

~~(1) The Division may certify an applicant who has a program course that:~~

~~(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;~~

~~(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;~~

~~(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;~~

~~(d) will establish and maintain course completion records.~~

~~(2) All online training courses shall be provided on a secure website.~~

R523-23-10. Grounds for Denial, Corrective Action, Suspension, and Revocation.

~~(1) The Division may deny, suspend or revoke certification if:~~

~~(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or~~

~~(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or~~

~~(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.~~

R523-23-11. Corrective Action.

~~(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:~~

~~(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the~~

provider is not in compliance and send written notice to the provider; and

~~(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.~~

~~R523-23-12. Suspension and Revocation.~~

~~(1) The Director or designee may suspend the certification of a provider as follows:~~

~~(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30 days plus any extensions granted by the Division.~~

~~(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.~~

~~(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.~~

~~(2) The Director or designee may revoke certification of a provider as follows:~~

~~(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.~~

~~(b) A provider fails to comply with corrective action while under a suspension.~~

~~(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.~~

~~R523-23-13. Procedure for Denial, Suspension, or Revocation.~~

~~(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:~~

~~(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.~~

~~(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.~~

KEY: substance abuse, server training, on-premise

Date of Enactment or Last Substantive Amendment: March 9, 2012

Notice of Continuation: June 18, 2012

Authorizing, and Implemented or Interpreted Law: 62A-15-105(5); 62A-15-401

Human Services, Substance Abuse
and Mental Health
R523-24

Off Premise Retailer (Clerk, Licensee
and Manager) Alcohol Training and
Education Seminar Rules of
Administration

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39883

FILED: 10/27/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repeal this rule due to the division's comprehensive reorganization of their rules. (DAR NOTE: The proposed new rule is Rule R523-13 under DAR No. 39884 in this issue, November 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: None--This rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Section 62A-15-401

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--This rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ **LOCAL GOVERNMENTS:** None--This rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ **SMALL BUSINESSES:** None--This rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is not a fiscal impact on businesses because this rule will be replaced by a new rule, R523-13, that has been renumbered to coincide with the division's comprehensive reorganization of its rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
 ♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
[R523-24. Off-Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-24-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for off-premise consumption in the scope of the person's employment with a general food store or similar business.

- (3) These rules include:
- (a) curriculum content standards;
 - (b) seminar provider standards;
 - (c) provider certification process;
 - (d) the ongoing activities of providers, and
 - (e) the process for approval, denial, suspension and revocation of provider certification.

R523-24-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "Provider" means an individual or company who has had their curriculum approved and certified by the Division.

(7) "Seminar" means the Off-Premise Alcohol Training and Education Seminar.

(8) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually sell or furnish alcoholic beverages to customers for off-premise consumption.

(9) "Retail employee" (clerk or supervisor) means any person employed by a general food store or similar business and who is engaged in the sale of or directly supervises the sale of beer to consumers for off-premise consumption.

R523-24-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a non-certified provider shall not meet the retailer training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application and curriculum, and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information, and notification of the action taken shall be forwarded in writing to the applicant. If an application for recertification requires additional information or corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-24-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail

employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) Provide technical support, such as a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) Issue a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) Track the internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) Provide an individual who takes an online course or test the opportunity to use an e-signature; or

R523-24-5. Retail Employee Responsibilities.

(1) A retail employee is required within 30 days of employment by a general food store or similar business to complete and pass the Seminar.

R523-24-6. Division Responsibilities.

The Division shall maintain the database of retail employees who have completed the Seminar and make this information available to the public.

R523-24-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) alcohol as a drug;

(b) alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain; which information shall be provided by the Division;

(c) recognizing the problem drinker or signs of intoxication;

(d) statistics identifying the underage drinking problem; which information provided by the Division;

(e) discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and intoxicated persons;

(f) strategies commonly used by minors to gain access to alcohol;

(g) process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(h) policies and procedures to prevent beer purchases by intoxicated individuals;

(i) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play; and

(j) recognition of beverages containing alcohol including examples of such beverages.

R523-24-8. Examination.

The examination shall include questions from each of the curriculum components identified in Section R523-24-7. The examination will be submitted for approval with the rest of the provider application.

R523-24-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify a provider applicant who:

(a) identifies all program instructors and instructor trainers and certifies in writing that they:

(i) have been trained to present the course material, and

(ii) that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages; within the past five years;

(b) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-24-9(a) for all new instructors;

(c) Allow the Division to audit all online courses or tests at any time the Division requests;

(d) agrees to invalidate a course completion certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test;

(e) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-24-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked and has reapplied without correcting the problem that resulted in the denial, suspension or revocation.

R523-24-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-24-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

~~(a) When a provider fails to respond in writing to address areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30 days plus any extensions granted by the Division.~~

~~(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.~~

~~(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.~~

~~(2) The Director or designee may revoke certification of a provider as follows:~~

~~(a) A provider or its authorized instructors continue to provide the Seminar while the provider is under a suspended certification.~~

~~(b) A provider fails to comply with corrective action while under a suspension.~~

~~(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.~~

R523-24-13. Procedure for Denial, Suspension, or Revocation.

~~(1) If the Division has grounds for action under these rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:~~

~~(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.~~

~~(b) The provider may request an informal hearing with the Director, or the Director's designee, within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.~~

~~KEY: off-premises, training, seminars, alcohol~~

~~Date of Enactment or Last Substantive Amendment: March 9, 2012~~

~~Notice of Continuation: July 13, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 62A-15-105(5); 62A-15-401~~

Insurance, Administration
R590-267
 Personal Injury Protection Relative
 Value Study Rule

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39904
 FILED: 10/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates the rule to add conversion factors and publications for use in 2016.

SUMMARY OF THE RULE OR CHANGE: The change adds conversion factors and publications for physicians to use when determining the reasonable value of services provided to patients on or after 01/01/2016. It also gives an end date of 12/31/2015 for the previously included conversion factors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-22-307(2)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Relative Values for Physicians, published by Optum360, 2015
- ◆ Adds Relative Values for Dentists, published by Optum360, 2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The department will be required to purchase two hard copies of the incorporated by reference RVD 2015 at \$260 each and two copies of the RVP 2015 at \$330 each. One copy will be maintained by the department and one copy will be maintained by the Division of Administrative Rules per rulemaking requirements.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government. The rule covers method by which providers determine the reasonable value of services they provide to consumers.

◆ **SMALL BUSINESSES:** Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents will need to purchase individually or as a group the RVD 2015 or RVP 2015 publication incorporated by reference in the rule. The cost of the RVD 2015 will be \$260 for a hard copy. The cost of the RVP 2015 will be \$330 for a hard copy. By using the publication with the conversion factors in the rule, they will be able to determine the reasonable charges for services they provide to those injured in automobile accidents.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Auto insurers, or those they contract with to service their claims, may purchase the RVD 2015 or RVP 2015 publication incorporated by reference in the rule. The cost of the RVD 2015 will be \$260 for a hard copy. The cost of the RVP 2015 will be \$330 for a hard copy. By using the publication with the conversion factors in the rule, they will be able to determine the reasonable charges of medical and dental services they are required to reimburse providers for treatment under personal injury protection coverage in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Auto insurers, or those they contract with to service their claims, and health care providers may purchase the RVD 2015 or RVP 2015 publication incorporated by reference in the rule.

The cost of the RVD 2015 will be \$260 for a hard copy. The cost of the RVP 2015 will be \$330 for a hard copy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Certain businesses will need to purchase copies of either the RVD 2015 or RVP 2015 from Optum360 to comply with the rule. These businesses will then be able to determine the reasonable charges of medical and dental services they are required to reimburse providers for treatment under personal injury protection coverage in Utah.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-267. Personal Injury Protection Relative Value Study Rule.

R590-267-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3)[;] and 31A-22-307(2).

R590-267-2. Purpose.

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a).

(2) As required by Subsection 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

R590-267-3. Scope.

This rule applies to services and accommodations provided:

(1) ~~provided~~ under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a); and

(2) ~~provided~~ on or after January 1, 2014.

R590-267-4. Definitions.

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD 2015" means 2015 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(3) As used in this rule "RVD 2013" means 2013 Edition of the Relative Values for Dentists published by Relative Values Studies, Inc., 12301 N. Grant St., Suite 230, Thornton, CO, 80241; phone: (866) 310-7874; email: info@rvsdata.com; website: www.rvsdata.com.

(3)4 As used in this rule "RVP 2015" means 2015 Edition of the Relative Values for Physicians published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(5) As used in this rule "RVP 2013" means 2013 Edition of the Relative Values for Physicians published by Optum[Insight]360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(4)6 As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(5)7 The publications identified in Subsections R590-267-4[-](2)[-and], (3), (4), and (5) are hereby incorporated by reference within this rule.

R590-267-5. Conversion Factors.

(1)(a) The following conversion factors shall be used with RVP 2015 to determine the reasonable value of medical services or accommodations provided on or after January 1, 2016:

(i) anesthesia, 97.13;

(ii) surgery, 200.00;

(iii) radiology, 35.84;

(iv) pathology, 24.29;

(v) medicine, 11.67;

(vi) evaluation and management, 13.16.

(b) The conversion factor used with RVD 2015 to determine the reasonable value of dental services or accommodations provided on or after January 1, 2016 shall be 60.00.

(2)(a) The following conversion factors shall be used with RVP 2013 to determine the reasonable value of medical services or accommodations provided from January 1, 2014 through December 31, 2015:

([a]i) anesthesia, 91.57;

([b]ii) surgery, 180.00;

([e]iii) radiology, 35.18;

([d]iv) pathology, 23.85;

([e]v) medicine, 10.87;

([f]vi) evaluation and management, 11.85.

(2)b The conversion factor used with RVD 2013 to determine the reasonable value of dental services or accommodations provided from January 1, 2014 through December 31, 2015 shall be 55.00.

R590-267-6. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

R590-267-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-8. [Enforcement Date:

~~_____The commissioner will begin enforcing the provisions of this rule on January 1, 2014.~~

R590-267-9. [Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: relative value study

Date of Enactment or Last Substantive Amendment: [November 18, 2013]2015

Authorizing, and Implemented or Interpreted Law: 31A-2-201(3); 31A-22-307(2)

**Labor Commission, Occupational
Safety and Health
R614-1
General Provisions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39855

FILED: 10/21/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reasons for the changes to Sections R614-1-1 through R614-1-4 are to make references to the Utah Occupational Safety and Health Division (UOSH) uniform throughout the rules, remove parts of the old rules not applicable to UOSH, clarify some parts of the old rules, renumber subsections, and incorporate the most current federal standards applicable to UOSH.

SUMMARY OF THE RULE OR CHANGE: Changes to Section R614-1-1 clarify the name of the division. Changes to Section R614-1-2 further clarify the name of the division, clarify the scope of incorporated federal regulations and state rules, and remove superfluous language. Changes to Section R614-1-3 remove parts which are not relevant to the division, clarify time frames, make uniform the name of the division, and renumber the subsections. Changes to Section

R614-1-4 incorporate the most current federal standards applicable to UOSH and remove redundancies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 29 CFR 1926.6 and 1926.20 to end of part 1926, published by Government Printing Office, 07/01/2015
- ◆ Updates 29 CFR 1904, published by Government Printing Office, 07/01/2015
- ◆ Updates 29 CFR 1908, published by Government Printing Office, 07/01/2015
- ◆ Updates 29 CFR 1910.6 and 1910.21 to end of part 1910, published by Government Printing Office, 07/01/2015

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no cost or savings to the state budget due to these rule revisions. These revisions clarify and update the existing rules and will have no cost impact on state budget.
- ◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government due to these rule revisions. These revisions clarify and update the existing rules and will have no cost impact on local government.
- ◆ **SMALL BUSINESSES:** There will be no cost or savings to small businesses due to these rule revisions. These revisions clarify and update the existing rules and will have no cost impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings to persons other than small businesses, businesses or local government due to these rule revisions. These revisions clarify and update the existing rules and will have no cost impact on persons other than small businesses, businesses, or local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- There will be no compliance costs for affected persons due to these rule revisions. These revisions clarify and update the existing rules and will have no compliance cost impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses due to these rule revisions. These revisions clarify and update the existing rules and will have no fiscal impact on businesses.

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

LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:

♦ Christopher Hill by phone at 801-530-6898, by FAX at 801-530-7606, or by Internet E-mail at chill@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R614. Labor Commission, Occupational Safety and Health.**R614-1. General Provisions.****R614-1-1. Authority.**

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, [~~Division of~~Utah Occupational Safety and Health Division], are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the [~~Division of~~Utah Occupational Safety and Health Division] of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of [~~UOSH~~the Utah Occupational Safety and Health Division], incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and [~~29-CFR~~] 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code R614-1 through R614-7. [~~Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~]

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

[~~C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).~~]

[~~D. "Administrator" means the director of the Division of Occupational Safety and Health.~~]

[~~E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.~~]

[~~F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.~~]

[~~G. "Commission" means the Utah Labor Commission.~~]

[~~H. "Council" means the Utah Occupational Safety and Health Advisory Council.~~]

[~~I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of [the 30 days]any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.~~]

[~~J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.~~]

[~~K. "Division" means the [~~Division of~~Utah Occupational Safety and Health Division (UOSH) within the Commission], known by the acronym of UOSH (Utah Occupational Safety and Health).~~]

[~~L. "Employee" includes any person suffered or permitted to work by an employer.~~]

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

[~~M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:~~]

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. [~~Material's~~]Safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

[~~N. Employee medical record~~]

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

[Ø]M. "Employer" means:

1. The state;
2. Each county, city, town, and school district in the state;

and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

[P]N. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

~~1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.~~

~~2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.~~

~~3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.~~

~~4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.~~

~~5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In~~

~~such cases, employment or payroll should be used in place of normal basis for determining the primary activity.]~~

[Q]Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

[R]P. "Hearing" means a proceeding conducted by the commission.

[S]Q. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

[T]R. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

[U]S. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

[V]I. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

[W]U. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[X]V. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

[Y]W. "Safety and Health Officer" means a person authorized by the ~~[Utah Occupational Safety and Health Administration]~~ Division to conduct inspections.

[Z]X. "Secretary" means the Secretary of the United States Department of Labor.

[AA]Y. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

~~[BB]~~Z. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

~~[CC]~~AA. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-~~[403-20B Appendix B]~~1-12B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

~~[DD]~~BB. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

~~[EE]~~CC. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. ~~[General Industry Standards.]The following federal occupational safety and health standards are hereby incorporated:~~

1. ~~[Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2011, edition are incorporated by reference.]29 CFR 1904, July 1, 2015, is incorporated by reference, except the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Utah Code Ann. Subsection 34A-6-301(3)(b)(2) and the Utah Administrative Code R614-1-5(C)(1).~~

2. 29 CFR 1908, July 1, 2011~~[+]~~5, is incorporated by reference.

3. 29 CFR ~~[1904, July 1, 2011, is incorporated by reference.~~

~~—————4. FR Vol. 77, Monday, March 26, 2012, Pages 17574 to and including 17896 "29CFR Part 1910 Hazard Communication:" Final Rule is incorporated by reference.]1910.6 and 1910.21 through the end part of 1910, July 1, 2015, are incorporated by reference.~~

~~[B. Construction Standards.~~

~~—————1]4. [Section] 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2011~~[+]~~5, edition [is]are incorporated by reference.~~

~~[2. FR Vol. 77, Monday, March 26, 2012, Pages 17574 to and including 17896 "29CFR Part 1910 Hazard Communication:" Final Rule is incorporated by reference.]~~

.....

KEY: safety

Date of Enactment or Last Substantive Amendment: ~~[July 8,] 2015~~

Notice of Continuation: October 22, 2012

Authorizing, and Implemented or Interpreted Law: 34A-6

Public Safety, Highway Patrol R714-500 Chemical Analysis Standards and Training

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39850

FILED: 10/16/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized by Section 41-6a-515 which requires the Commissioner of the Department of Public Safety to establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training. The changes proposed clean up some language and grammar. The changes will also affect the requirements for an operator to re-certify every three years.

SUMMARY OF THE RULE OR CHANGE: The changes will include some language and grammar clean-up. The proposed changes will define the process for how an operator will need to re-certify every three years. The changes will allow for an operator to take a re-certification exam, if they pass the exam they renew their certification for another three years. If they are unable to pass or allow their certification to lapse, they will be required to take a four-hour class and pass the exam.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-515

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The proposed changes will clean-up some grammar in the rule, and it also changes the requirement for law enforcement officers to take an online test to re-certify as an intoxilyzer operator rather than take an

eight-hour course. There will be a time savings for individual officers from police officers all over the state. The cost saved by training hours will be absorbed in other training. Per statute law enforcement officers are required to get 40 hours of training to maintain certification. The test already exists online and there will not be a cost to create this test. The rule change will not affect state budgets.

♦ **LOCAL GOVERNMENTS:** The proposed change will clean-up some grammar in the rule, and it also changes the requirement for law enforcement officers to take an online test to re-certify as an intoxilyzer operator rather than take an eight-hour course. There will be a time savings for individual officers from police officers all over the state. The cost saved by training hours will be absorbed in other training. Per statute law enforcement officers are required to get 40 hours of training to maintain certification. The test already exists online and there will not be a cost to create this test. The rule change will not affect local government.

♦ **SMALL BUSINESSES:** The proposed change will clean-up some grammar in the rule, and it also changes the requirement for law enforcement officers to take an online test to re-certify as an intoxilyzer operator rather than take an eight-hour course. There will be a time savings for individual officers from police officers all over the state. The cost saved by training hours will be absorbed in other training. Per statute law enforcement officers are required to get 40 hours of training to maintain certification. The test already exists online and there will not be a cost to create this test. The rule change is for law enforcement officers and will not affect small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed change will clean up some grammar in the rule, and it also changes the requirement for law enforcement officers to take an online test to re-certify as an intoxilyzer operator rather than take an eight hour course. There will be a time savings for individual officers from police officers all over the state. The cost saved by training hours will be absorbed in other training. Per statute law enforcement officers are required to get 40 hours of training to maintain certification. The test already exists online and there will not be a cost to create this test. The rule change will not affect any other persons or entities not listed above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The online exam already exists and has already been utilized by officer to take the exam, there will be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will not have any fiscal impact on businesses.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W

SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steven Winward by phone at 801-550-6163, or by Internet E-mail at swinward@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2016

AUTHORIZED BY: Steven Winward, Captain

R714. Public Safety, Highway Patrol.

R714-500. Chemical Analysis Standards and Training.

R714-500-1. Authority.

A. This rule is authorized by Section 41-6a-515 which requires the [e]Commissioner of the Department of Public Safety to establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

R714-500-2. Definitions.

A. Certification Report means document prepared by a technician detailing the results of a certification check.

B. Certification Check means analysis of instrument function and calibration performed by technician.

C. Instrument means breath alcohol concentration testing instruments employed by law enforcement officers for evidentiary purposes and approved by the department.

D. Operator means individual certified by the department to administer breath alcohol concentration tests.

E. Breath Alcohol Concentration Test Results means analytical results of a breath alcohol concentration test provided by an approved instrument. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

F. Program means all breath alcohol concentration testing techniques, methods, and programs.

G. Program Supervisor means authorized representative of the Commissioner of Public Safety for the breath alcohol concentration testing program and supervisor of said program.

H. Technician means individual certified by the department to operate, provide training on, and perform maintenance, repairs, and certification checks on breath alcohol concentration testing instruments.

I. Breath Test means test administered by an operator or technician on an instrument for the purpose of determining breath alcohol concentration.

J. Department means the Utah Department of Public Safety.

R714-500-3. Purpose.

A. It is the purpose of this rule to set forth:

- (1) Procedures whereby the department may certify:
 - (a) breath alcohol concentration testing programs;
 - (b) breath alcohol concentration testing instruments;
 - (c) breath alcohol concentration analytical results.
 - (d) breath alcohol concentration testing operators;

- (e) breath alcohol concentration testing technicians; and
 - (f) breath alcohol concentration testing program supervisors.
- (2) Adjudicative procedure concerning:
- (a) application for and denial, suspension or revocation of the aforementioned certifications; and
 - (b) appeal of initial department action concerning the aforementioned certifications.

R714-500-4. Application for Certification.

A. Application for certification shall be on forms provided by the department in accordance with Subsection 63G-4-201(3)(c).

R714-500-5. Program Certification.

- A. All programs must be certified by the department.
- B. Prior to initiating a program, an agency or laboratory shall submit application to the [d]Department for certification. The application shall show the brand or model, or both, of the instrument to be used and contain a resume of the program followed. The [d]Department shall inspect to determine compliance with all applicable provisions under R714-500.
- C. Certification of a program may be denied, suspended, or revoked by the [d]Department if, based on information obtained by the [d]Department, program supervisor, or technician, the agency or laboratory fails to meet the criteria as outlined by the department.

R714-500-6. Instrument Certification.

- A. Criteria: To be approved, each manufacturer's brand or model of instrument shall meet the following criteria:
1. The instrument shall provide accurate and consistent analysis of breath specimen for the determination of breath alcohol concentration for law enforcement purposes;
 2. Breath alcohol concentration analysis of an instrument shall be based on the principle of infra-red energy absorption or any other similarly effective procedure as specified by the Department;
 3. Breath specimen analyzed shall be essentially alveolar or end expiratory in composition according to the analysis method utilized;
 4. Measurement of breath alcohol concentration shall be reported in grams of alcohol per 210 liters of breath;
 5. The instrument shall analyze a reference sample during certification checks, following procedures outlined in R714-500-6-D;
 6. Other criteria, deemed necessary by the Department, may be required to correctly and adequately evaluate the instrument as practical and reliable for law enforcement purposes.
- B. Acceptance: The Department shall approve all breath alcohol concentration testing instruments employed for law enforcement evidentiary purposes.
1. The Department shall maintain an approved list of accepted instruments. Law enforcement entities shall select instruments from this list, which list shall be available for public inspection upon request from the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.
 2. A manufacturer may apply for approval of an instrument by brand or model not on the list. The Department shall subsequently examine each instrument to determine if it meets criteria specified by R714-500 and applicable purchase requisitions.

3. Upon compliance with R714-500, an instrument may be approved by brand or model and placed on the list of accepted instruments.

4. Certification Reports verifying the certification of all instruments shall be kept on file by the program supervisor and made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

C. Initial Instrument Certification: All breath alcohol concentration testing instruments used for law enforcement evidentiary purposes shall be certified prior to being placed into service.

1. The program supervisor shall determine that each individual instrument, by serial number, conforms to the brand or model that appears on the [e]Commissioner's accepted list.

2. Prior to an instrument being placed into service, a technician shall perform a certification check, following the standardized operating procedure and requirements outlined in R714-500-6-D.

3. Upon successful completion of these requirements, the instrument shall be deemed to be operating correctly and may be placed into service.

D. Regular Instrument Certification Checks

1. Once an instrument has been placed into service, it shall be certified by a technician on a routine basis, not to exceed 40 days between certification checks.

2. The program supervisor shall establish a standardized operating procedure for performing certification checks, following requirements set forth in R714-500 or by using such procedures as recommended by the manufacturer of the instrument to meet its performance specifications, as derived from:

- a. electrical power check;
- b. operating temperature check;
- c. internal purge check;
- d. invalid test procedures check;
- e. diagnostic measurements check;
- f. internal calibration check;
- g. known reference sample check; and
- h. measurements of breath alcohol concentration, displayed

in grams of alcohol per 210 liters of breath.

A copy of these standard operating procedures may be made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

3. For known reference sample checks set forth in R714-500-6-D-2-g, the instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight or volume of ethanol held at a constant temperature or a compressed inert gas and alcohol mixture from a pressurized cylinder.

a. The result of the analysis shall agree with the reference sample's predicted value, within parameters of calibration set at plus or minus 5% or 0.005, whichever is greater, or such limits as set by the Department.

i. For example, if a known reference sample has a value of 0.100, the parameters of calibration set at plus or minus 5% would equal 0.005 ($0.100 \times 5\% = 0.005$). Acceptable parameters of calibration using a known 0.100 reference sample would therefore range from 0.095 to 0.105.

b. Analytical results of the known reference sample check shall be reported to three decimal places.

1. Other checks, deemed necessary by the Department or program supervisor, may be required to correctly and adequately evaluate the instrument.

2. Technicians shall follow the standardized operating procedure as set forth by the program supervisor when performing certification checks.

3. If an instrument successfully passes all the certification checks, it shall be deemed to be operating properly.

4. A report of the certification results with the serial number of the certified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

5. Results of certification checks shall be kept in a permanent record retained by the technician or program supervisor.

E. Instrument Repair and Recertification

1. The Department may at any time determine if a specific instrument is unreliable or unserviceable. Upon such a finding, the instrument shall be removed from service and certification withdrawn.

2. A report of the certification results showing the certification has been withdrawn shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

3. Upon proper repair, the instrument may be recertified and again placed into service.

a. Minimum requirements for recertification are identical to those outlined in R714-500-6-D, sub-sections 2, 3, and 4.

4. A report of the certification results with the serial number of the recertified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

R714-500-7. Breath Alcohol Concentration Test Analytical Results.

A. The instrument should be operated by either a certified operator or technician.

B. Breath specimen analyzed for breath alcohol concentration shall be essentially alveolar or end expiratory in composition according to the analysis method utilized.

1. The results of tests to determine breath alcohol concentration shall be expressed as equivalent grams of alcohol per 210 liters of breath.

2. Analytical results on a breath alcohol concentration test shall be recorded using terminology established by State statute and reported to three decimal places.

a. For example, a result of 0.237g/210L shall be reported as 0.237.

C. Results of breath alcohol concentration tests will be printed by the instrument.

D. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

E. The printed results of a breath alcohol concentration test will be retained by the operator or the operator's individual agencies' designated record or evidence custodian.

F. Instrument internal standards on a breath alcohol concentration test do not have to be recorded numerically.

R714-500-8. Operator Certification.

A. All breath alcohol testing operators must be certified by the [d]Department.

B. All training for initial and renewal certification will be conducted by a program supervisor or technician.

C. Initial Certification

(1) In order to be certified as a breath alcohol concentration testing instrument operator, an individual must successfully complete a course of instruction approved by the [d]Department, which must consist of eight hours of training, including as a minimum the following:

a. Effects of alcohol in the human body;

b. Operational principles of breath testing;

c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;

d. Legal aspects of chemical testing, DUI case law, and other alcohol related laws;

e. Laboratory participation performing simulated tests on the instruments, including demonstrations under the supervision of a class instructor; and

f. Examination and critique of course.

(2) After successful completion of the initial certification course a certificate will be issued that will be valid for three years.

D. Renewal Certification

(1) An operator seeking to renew his or her certification shall successfully complete the recertification exam prior to the expiration date of the certificate.

~~[(1) The operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will consist of eight hours of training, including as a minimum the following:~~

~~a. Effects of alcohol in the human body;~~

~~b. Operational principles of breath testing;~~

~~c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;~~

~~d. Legal aspects of chemical testing DUI case law, and other alcohol related laws;~~

~~e. Examination and critique of course;~~

~~f. Or the operator must successfully complete the web-based computer program including successful completion of exam. Results of exams must be forwarded to program supervisor and a certification certificate will be issued.~~

~~(2) After successful completion of the re-certification course a certificate will be issued that will be valid for three years.]~~

(2) The Department shall renew an operator's certificate for a three-year period after he or she successfully completes the recertification examination.

(3) Any operator whose [allows their] certification [to] expires [one year or longer must] shall retake and successfully complete the [initial] recertification course in order to renew his or her certification. [as outlined in R714-500-8:]

Four hours of training, including the following topics:

a. Effects of alcohol in the human body;

b. Operational principles of breath testing;

c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;

d. Legal aspects of chemical testing DUI case law, and other alcohol related laws; and

e. Successful completion of the recertification examination.

R714-500-9. Technician Certification.

A. All technicians, must be certified by the department.

B. The minimum qualifications for certification as a technician are:

- (1) Satisfactory completion of the operator's initial certification course and/or renewal certification course;
- (2) Satisfactory completion of the Breath Alcohol Testing Supervisor's course offered by Indiana University or an equivalent course of instruction, as approved by the program supervisor;
- (3) Satisfactory completion of the manufacturer's maintenance and repair technician course;
- (4) Maintenance of technician's status through a minimum of eight hours training each calendar year. This training must be directly related to the breath alcohol testing program and must be approved by the program supervisor.

C. Any technician who fails to meet the requirements of R714-500-9-B and allows their certification to expire for more than one year, must renew their certification by meeting the minimum requirements as outlined in R714-500-9-B.

D. Only certified breath alcohol testing technicians shall be authorized to provide expert testimony concerning the certification and all other aspects of the breath testing instrument under their supervision.

R714-500-10. Program Supervisor Certification.

The program supervisor will be required to meet the minimum certification standards set forth in R714-500-9. Certification should be within one year after initial appointment or other time as stated by the department.

R714-500-11. Previously Certified Personnel.

A. This rule shall not be construed as invalidating the certification of personnel previously certified as operators under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements as outlined in R714-500-8.

B. This rule shall not be construed as invalidating the certification of personnel previously certified as a technician under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements in R714-500-8.

R714-500-12. Revocation or Suspension of Certification.

A. The department may, on the recommendation of the program supervisor, revoke or suspend the certification of any operator or technician:

- (1) Who fails to comply with or meet any of the criteria required in this rule; or
- (2) Who falsely or deceitfully obtained certification; or
- (3) Who fails to show proficiency in proper operation of the breath testing instrument; or
- (4) For other good cause.

R714-500-13. Adjudicative Proceedings.

A. Purpose of section. It is the purpose of this section to set forth adjudicative proceedings in compliance with Title 63G Chapter 4.

B. Designation. All adjudicative proceedings performed by the department shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

C. Denial, suspension or revocation. A party who is denied certification or whose certification is suspended or revoked, will be

informed within a period of 30 days by the department the reasons for denial, suspension, or revocation.

D. Appeal of denial, suspension, or revocation. A party who is denied certification or whose certification is suspended or revoked may appeal to the commissioner or designee on a form provided by the department in accordance with Subsection 63G-4-201(3)(C). The appeal must be filed within ten days after receiving notice of the department action.

E. No hearing will be granted to the party. The commissioner or designee will merely review the appeal and issue a written decision to the party within ten days after receiving the appeal.

KEY: alcohol, intoxilyzer, breath testing, operator certification

Date of Enactment or Last Substantive Amendment: [~~November 27, 2010~~]2015

Notice of Continuation: October 2, 2014

Authorizing, and Implemented or Interpreted Law: 41-6a-515; 63G-4

Public Safety, Criminal Investigations and Technical Services, Criminal Identification **R722-310** Regulation of Bail Bond Recovery and Enforcement Agents

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39889
FILED: 10/29/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the requirement of documentation showing the existence of a \$10,000 surety bond for licensure, and update a statutory reference due to renumbering.

SUMMARY OF THE RULE OR CHANGE: Clarification of the requirement of documentation showing the existence of a \$10,000 surety bond for licensure, and an update to a statutory reference due to renumbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-11-103(5)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No aggregate anticipated cost or savings to the state budget. This rule amendment clarifies the requirement of documentation showing the existence of a \$10,000 surety bond for licensure. The rule change will not affect the state budget nor are there any anticipated costs or savings.

◆ LOCAL GOVERNMENTS: No aggregate anticipated cost or savings to local government. This rule amendment clarifies the requirement of documentation showing the existence of a \$10,000 surety bond for licensure. The rule change will not affect local government nor are there any anticipated costs or savings.

◆ SMALL BUSINESSES: No aggregate anticipated cost or savings to small businesses. This rule amendment clarifies the requirement of documentation showing the existence of a \$10,000 surety bond for licensure. The rule change will not affect small businesses nor are there any anticipated costs or savings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This rule amendment clarifies the requirement of documentation showing the existence of a \$10,000 surety bond for licensure. The rule change will not affect persons other than small businesses, businesses, or local government entities nor are there any anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs. As this amended rule addresses the clarification of the requirement of documentation showing the existence of a \$10,000 surety bond for licensure there are no anticipated compliance costs for the affected persons addressed in the cost information above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule amendment and found no anticipated fiscal impact on business.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.

R722-310-1. Purpose.

The purpose of the rule is to establish procedures for the licensing of bail enforcement agents, bail bond recovery agencies, bail recovery agents, and bail recovery apprentices.

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

- (1) Terms used in this rule are defined in Section 53-11-102.
- (2) In addition:
 - (a) "act involving moral turpitude" means conduct which:
 - (i) is done knowingly contrary to justice, honesty, or good morals;
 - (ii) has an element of falsification or fraud; or
 - (iii) contains an element of harm or injury directed to another person or another's property;
 - (b) "bureau" means the Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;
 - (c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;
 - (d) "licensee" means an individual who has received a bail enforcement agent license, bail bond recovery agency license, bail recovery agent license or bail recovery apprentice license;
 - (e) "revocation" means the permanent deprivation of a bail bond recovery license, however revocation does not preclude an individual from applying for a new bail bond recovery license if the reason for revocation no longer exists; and
 - (f) "suspension" means the temporary deprivation, for a specified period of time, of a bail bond recovery license.

R722-310-4. Application for Licensure.

- (1)(a) An applicant seeking to obtain a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed application packet to the bureau.
- (b) The application packet shall include:
 - (i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;
 - (ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;
 - (iii) a photocopy of a state-issued driver license or identification card;
 - (iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;
 - (v) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115; [and]

(vi) documentation from an approved provider indicating that the applicant has completed the 16-hour training program, described in Subsection 53-11-108(4)[-]; and

(vii) documentation showing the licensee has a surety bond in amount of \$10,000 which meets the requirements described in Subsection 53-11-113(3).

(2) If the applicant is applying for license as a bail enforcement agent, the applicant must also provide documentation indicating that the applicant has 2,000 hours of experience related to bail bond recovery and enforcement.

(3) If an applicant for license as a bail enforcement agent wishes to operate a bail bond recovery agency, the applicant shall also provide:

(a) the name under which the bail bond recovery agency will operate; and

(b) a certificate of workers' compensation insurance, if applicable.

(4) If the applicant is applying for license as a bail recovery agent, the applicant shall also provide:

(a) documentation indicating that the applicant has 1,000 hours of experience related to bail bond recovery and enforcement; and

(b) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(5) If the applicant is applying for license as a bail recovery apprentice, the applicant shall also provide verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(6) If the applicant is seeking to carry a firearm as a licensee, the applicant shall comply with all of the requirements found in R722-300 and provide documentation from an approved bail enforcement firearms instructor indicating that the applicant has completed the 16-hour firearms training course required in Subsection 53-11-108(5).

(7)(a) Once the application packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.

(b) Application packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.

R722-310-5. Training Program Requirements.

(1) The 16-hour training program described in Subsection 53-11-108(4), which is required for licensure, shall be provided by a training program provider approved by the board.

(2) Training program providers seeking to become approved by the board shall provide a detailed course curriculum for the board's review.

(3)(a) Training programs which are approved by the board shall be open to anyone who wishes to attend.

(b) If a training provider charges a fee for the training program, the same fee shall apply to all participants in the training program.

(4) Training program providers shall notify the bureau, at least five days in advance, of the dates, times, and location of all courses provided.

(5)(a) Bureau investigators shall periodically monitor approved training programs to ensure that the training program is providing instruction as required by Subsection 53-11-108(4).

(b) The training program may not charge an investigator a fee for monitoring the program.

(6) If the board receives information that a training program is not providing instruction as required by Subsection 53-11-108(4), the board may terminate its approval of the training program after notice and an opportunity for a hearing before the board.

R722-310-6. Verification of Experience.

(1) When verifying the experience necessary for licensure as a bail enforcement agent or a bail recovery agent, an applicant shall provide a written statement which lists, in detail, the number of hours and the type of bail bond recovery work performed by the applicant.

(2) The verification of experience shall be signed and notarized by the applicant's employer or by an individual who has personal knowledge of the bail bond recovery work performed.

(3) The bail bond recovery work shall have been performed within ten years from the date of the application.

R722-310-7. Credit for Specified Training.

(1) An applicant who wishes to receive credit towards the experience requirement for licensure, shall provide documentation indicating that the applicant has a criminal justice bachelor's degree or has successfully completed a basic training course described in Subsections 53-11-114(1)(b) or 53-11-114(1)(c).

(2) An applicant may receive up to 1,000 hours of credit towards the experience requirement for licensure under Section 53-11-114.

(3) An applicant seeking credit under Section 53-11-114, is not exempt from completing the 16-hour training course required by Subsection 53-11-108(4).

R722-310-8. Renewal of a License.

(1)(a) A licensee seeking to renew a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(iv) evidence that the licensee has completed eight hours of continuing classroom instruction required by Subsection 53-11-111(2); and

(v) ~~evidence that~~ documentation showing the licensee has a \$10,000 surety bond which meets the requirements described in Subsection ~~[53-9-110(3)]~~ 53-11-113(3).

(2)(a) Once the renewal packet is complete, the bureau shall review it to determine if the licensee meets the requirements for renewal.

(b) If the bureau determines the licensee does not meet the requirements for renewal, the bureau shall submit the renewal packet to the board for their review at the next regularly scheduled meeting.

(c) Renewal packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.

(3) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-310-4.

R722-310-9. Requirements for Continuing Classroom Instruction.

(1) A licensee who renews his or her license for the first time shall attend four hours of continuing classroom instruction provided by the bureau, which shall count towards the eight hours of continuing classroom instruction required by Subsections 53-11-111(2) and 53-11-109(2).

(2) The course provided by the bureau shall:

(a) provide updates on Utah law, administrative changes, and other pertinent information designed to enhance the licensee's knowledge of bail recovery; and

(b) be taught by the bureau twice yearly, with the dates posted on the bureau's website.

R722-310-10. Criteria for Certified Bail Enforcement Firearms Instructor.

(1) The 16-hour firearms training program described in Subsection 53-11-108(5), shall be provided by a bail enforcement firearms instructor approved by the bureau.

(2) A bail enforcement firearms instructor approved by the bureau shall be a certified Utah concealed firearm permit instructor under Subsection 53-5-704~~(8)~~(9) and be in good standing with the bureau.

(3)(a) Each approved bail enforcement firearms instructor shall adhere to the curriculum adopted by the bureau.

(b) An instructor may supplement, but may not detract from the set curriculum.

R722-310-11. Notice to Commissioner.

A bail bond recovery agency may provide notice of a change in the name or address of a bail bond agency, or any change of employees or contract employees, to the commissioner as required by Subsection 53-11-116(5) by sending a written notice to the bureau that is signed by the licensee.

R722-310-12. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

(2)(a) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(b) The bureau may deny a license renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(3) The board shall review all investigations presented by the bureau and may take disciplinary action against a licensee based on a violation of Section 53-11-119.

(4)(a) The board shall issue a written decision within ten days after the board meets to decide the matter.

(b) The board's written decision shall indicate that the applicant or licensee may appeal to the commissioner within 30 days from the date that the written decision is issued.

(5)(a) If an applicant or licensee appeals the board's decision, the commissioner, or his designee, shall review the materials in the bureau's file, the findings of the board along with any materials submitted by the applicant or licensee, and may affirm, adopt, modify, supplement, reverse, or reject the board's findings, or return the matter to the board for reconsideration.

(b) If the applicant or licensee requests a hearing, the commissioner, or his designee, shall schedule a hearing within 60 days from the receipt of the request for review.

R722-310-13. Identification of Licensees.

(1)(a) A licensee shall be issued an identification card by the bureau which identifies the licensee as a bail enforcement agent, bail bond recovery agency, bail recovery agent or bail recovery apprentice.

(b) The identification card shall indicate on its face if the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2)(a) A bail enforcement agent or bail recovery agent may possess and display a badge that is identical to the badge depicted on the bureau's website in accordance with Section 53-11-121.

(b) A bail enforcement agent or bail recovery agent may obtain a badge from any source, so long as it complies with the following specifications:

(i) the badge shall be 2.55 inches high and 2.66 inches wide;

(ii) the badge shall be in the shape of a five-point star on a circle;

(iii) the star shall be gold in color and the circle must be silver in color;

(iv) the center of the star shall be black in color and contain a seal with the phrase "Liberty and Justice For All";

(v) the text of the badge shall be written in block lettering and must be black;

(vi) the silver circle shall contain two panels with writing to indicate whether the agent is a bail enforcement or bail recovery agent; and

(vii) the badge shall contain two gold panels with writing to indicate the word "Utah" on the top panel and the agent's license number on the bottom panel.

(3) The design approved by the board under Subsection 53-11-121(5) shall contain the words "bail enforcement agent" or "bail recovery agent" written on both the chest and back in writing which is:

(a) at least two inches in height on the back;

(b) at least one half of an inch in height on the front; and

(c) in a color that contrasts with the color of the item of clothing.

KEY: bail bond enforcement agents, bail bond recovery agents, bail bond recovery apprentices, licenses

Date of Enactment or Last Substantive Amendment: [~~November 21, 2014~~2015]

Notice of Continuation: January 7, 2015

Authorizing, and Implemented or Interpreted Law: 53-11-103(5)

Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-360

Certificate of Removal from the Sex
Offender and Kidnap Registry

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39890

FILED: 10/29/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry, and change a statutory reference due to renumbering.

SUMMARY OF THE RULE OR CHANGE: Clarification that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry, and change made to a statutory reference due to renumbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-41-102 and Section 77-41-112 and Subsection 53-10-104(13) and Subsection 63G-4-203(1) and Subsection 77-40-102(11)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. This amendment clarifies that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry. The rule change will not affect the state budget nor are there any anticipated costs or savings.

♦ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government. This amendment clarifies that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry. The rule change will not affect local government nor are there any anticipated costs or savings.

♦ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. This amendment clarifies that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry. The rule change will not affect

small businesses nor are there any anticipated costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This amendment clarifies that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry. The rule change will not affect persons other than small businesses, businesses, or local government entities nor are there any anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs. As this amended rule addresses the clarification that the certificate issued by the Department of Public Safety, Bureau of Criminal Identification is a certificate of eligibility for removal, not the actual removal from the Sex Offender and Kidnap Registry there are no anticipated costs for affected persons addressed in the cost information above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule amendment and found no anticipated fiscal impact on business.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL
SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-360. Certificate of Eligibility for Removal from the Sex Offender and Kidnap Offender Registry.

R722-360-1. Purpose.

The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from the

Utah Sex Offender and Kidnap Offender Registry (SOR) pursuant to Section 77-41-112.

R722-360-2. Authority.

This rule is authorized by Subsection 63G-4-203(1).

R722-360-3. Definitions.

(1) Terms used in this rule are defined in Section 77-41-102.

(2) In addition:

(a) "SOR certificate of [removal]eligibility" has the same meaning as "certificate of eligibility" as defined in Subsection 77-41-102(3)[means a document issued by the bureau indicating that the petitioner meets the requirements found in Subsections 77-41-112(1)(b) and (d)];

(b) "petitioner" means a person seeking [a] an SOR certificate of eligibility[removal] from the bureau; and

(c) "traffic offense" [means the same thing]has the same meaning as defined in Subsection 77-40-102[(40)](11).

R722-360-4. Application for a Certificate of Eligibility for Removal.

(1)(a) A person may apply for [a] an SOR certificate of eligibility[removal] by submitting a completed Application for Removal of Name from the Sex Offender/Kidnap Registry form to the bureau.

(b) The application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for [a] an SOR certificate of eligibility[removal] found in Subsections 77-41-112(1)(b) and (d).

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine whether the petitioner meets the requirements for [a] an SOR certificate of eligibility[removal], the bureau may require the petitioner to submit additional information.

(4) If the bureau finds that the petitioner meets the requirements for the issuance of [a] an SOR certificate of eligibility[removal], the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner must pay the issuance fee established by the bureau in order to receive the SOR certificate of eligibility[removal].

(5) If the bureau finds that the petitioner does not meet the criteria for the issuance of [a] an SOR certificate of eligibility[removal], the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-360-5.

R722-360-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility for Removal.

(1) A petitioner may seek agency review of the denial of an application for [a] an SOR certificate of eligibility[removal], as

provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for agency review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) indicate the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for [a] an SOR certificate of eligibility[removal].

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If further review indicates that the petitioner meets the requirements for the issuance of [a] an SOR certificate of eligibility[removal], the order shall indicate that the petitioner must pay the issuance fee before receiving the SOR certificate of eligibility[removal].

(c) If further review indicates that the petitioner does not meet the requirements for [a] an SOR certificate of eligibility[removal], the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-360-6.

R722-360-6. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for [a] an SOR certificate of eligibility[removal], as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date that the bureau's final written order is issued.

KEY: certificate of eligibility for removal, sex offender registry, kidnap offender registry

Date of Enactment or Last Substantive Amendment: [~~March 25, 2013~~2015

Authorizing, and Implemented or Interpreted Law: 63G-4-203(1); 77-41-112; 77-41-102; 77-40-102[(40)](11)

Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification

R722-390

Certificate of Eligibility for Removal
from the Utah White Collar Crime
Offender Registry

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39891

FILED: 10/29/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry pursuant to Section 77-42-108, and to carry out the statutory provisions of H.B. 378 (2015 General Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for applying for a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry, agency review of a decision to deny an application for a certificate of eligibility for removal, and judicial review.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-42-102 and Section 77-42-108 and Subsection 63G-4-203(1) and Subsection 77-40-102(10)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. This proposed rule addresses the actual procedures of applying for a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry and the adjudication proceedings. This program is intended to be cost neutral, non-revenue generating, and the fees associated with the certificate of eligibility for removal application and issuance are intended to merely cover the cost of administering the program.

♦ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government. This proposed rule addresses the actual procedures of applying for a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry and the adjudication proceedings. Thus, no aggregate cost or savings to local government is anticipated.

♦ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. This proposed rule addresses the actual procedures of applying for a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry and the adjudication proceedings. Thus, no aggregate cost or savings to small businesses is anticipated.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This proposed rule addresses the actual procedures of applying for a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry and the adjudication proceedings. Thus, no aggregate cost or savings to persons other than small businesses, businesses, or local government entities is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons may seek a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry on a voluntary basis. Those seeking this service will be required to pay a \$120 application fee. If a certificate of eligibility for removal is issued, there will be no additional cost for the eligibility certificate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should not be any particular fiscal impact on business. This rule implements procedures for the application and issuance of a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry according to statutory requirements, and applies to individual persons.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL
SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-390. Certificate of Eligibility for Removal from the Utah White Collar Crime Offender Registry.****R722-390-1. Purpose.**

The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry (WCCR) pursuant to Section 77-42-108.

R722-390-2. Authority.

This rule is authorized by Subsection 63G-4-203(1).

R722-390-3. Definitions.

(1) Terms used in this rule are defined in Section 77-42-102.

(2) In addition:

(a) "WCCR certificate of eligibility" has the same meaning as "certificate of eligibility" as defined in Subsection 77-42-102(4);

(b) "petitioner" means a person seeking a WCCR certificate of eligibility from the bureau; and

(c) "traffic offense" has the same meaning as defined in Subsection 77-40-102(10).

R722-390-4. Application for a Certificate of Eligibility for Removal.

(1)(a) A person may apply for a WCCR certificate of eligibility by submitting a completed Application for Removal of Name from the White Collar Crime Offender Registry form to the bureau.

(b) The application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for a WCCR certificate of eligibility found in Subsection 77-41-108(2)(b).

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine whether the petitioner meets the requirements for a WCCR certificate of eligibility, the bureau may require the petitioner to submit additional information.

(4) If the bureau finds that the petitioner meets the requirements for the issuance of a WCCR certificate of eligibility, the bureau shall send the WCCR certificate to the petitioner at the address indicated on the application form.

(5) If the bureau finds that the petitioner does not meet the criteria for the issuance of a WCCR certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-390-5.

R722-390-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility for Removal.

(1) A petitioner may seek agency review of the denial of an application for a WCCR certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for agency review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) indicate the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for a WCCR certificate of eligibility.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If further review indicates that the petitioner meets the requirements for the issuance of a WCCR certificate of eligibility, the order shall indicate that the petitioner must pay the issuance fee before receiving the WCCR certificate of eligibility.

(c) If further review indicates that the petitioner does not meet the requirements for a WCCR certificate of eligibility, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-390-6.

R722-390-6. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for a WCCR certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date the bureau's final written order is issued.

KEY: certificate of eligibility for removal, white collar crime offender registry, white collar crime offenders

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 63G-4-203(1); 77-42-108; 77-42-102; 77-40-102(10)

Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-900
Access to Bureau Records

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39892

FILED: 10/29/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies the ability of the Bureau of Criminal Identification within the Department of Public Safety to retain the fingerprints of certain applicants in both local and national databases for notification of subsequent criminal history entries in said databases pursuant to Subsection 53-10-108(14). The retention of fingerprints is in a program known as Rap Back System.

SUMMARY OF THE RULE OR CHANGE: Clarification of the ability of the Bureau of Criminal Identification within the Department of Public Safety to retain the fingerprints of certain applicants in both local and national databases for notification of subsequent criminal history entries in said databases pursuant to Subsection 53-10-108(14). The retention of fingerprints is in a program known as Rap Back System.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-10-108(14)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. This rule change is a clarification of the ability of the Bureau of Criminal Identification within the Department of Public Safety to retain the fingerprints of certain applicants in both local and national databases for notification of subsequent criminal history entries in said databases pursuant to Subsection 53-10-108(14). Thus, no aggregate cost or savings to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government. This rule change is a clarification of the ability of the Bureau of Criminal Identification within the Department of Public Safety to retain the fingerprints of certain applicants in both local and national databases for notification of subsequent criminal history entries in said databases pursuant to Subsection 53-10-108(14). Thus, no aggregate cost or savings to local government is anticipated.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. This rule change is a clarification of the ability of the Bureau of Criminal Identification within the Department of Public Safety to retain the fingerprints of certain applicants in both local and national databases for notification of subsequent criminal history entries in said databases pursuant to Subsection 53-10-108(14). Thus, no aggregate cost or savings to small businesses is anticipated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be a cost of \$5 (local) and \$13 (national) fees for the retention of fingerprints of persons in said databases. The \$5 fee will cover the cost and maintenance for retention in the local (Western Identification Network - WIN) database and the \$13 fee will cover the cost and maintenance for retention in the national (FBI) database.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Entities that are eligible under state and federal statute to participate in the retention programs may require retention of fingerprints in said databases for purposes of employment, volunteers, licensing, and other authorized purposes. Persons whose fingerprints are retained in the local and national databases will be required to pay fees of \$5 and \$13, respectively, for retention in said databases.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should not have any particular fiscal impact on business. This rule clarifies the authority to retain fingerprints and collect fees associated with the enrollment of authorized fingerprints in local and national databases. The fees apply to individual persons.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-900. Access to Bureau Records.

R722-900-1. Purpose.

The purpose of this rule is to establish procedures whereby criminal justice agencies, qualified entities, and individuals may obtain access to bureau records.

R722-900-2. Authority.

This rule is authorized by Subsections 53-10-108([7]9) and ([8]10).

R722-900-3. Definitions.

- (1) Terms used in this rule are found in Section 53-10-102.
- (2) In addition:
 - (a) "agency" means a criminal justice agency as defined in Subsection 53-10-102(9) and 28 U.S.C. Subsection 534(e), or a non-criminal entity authorized to access CJIS under state or federal law;
 - (b) "bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;
 - (c) "CJIS" means the Criminal Justice Information System administered by the FBI;
 - (d) "entity" means an entity qualified to access criminal history information under state or federal law;
 - (e) "entity id" means an entity's unique identifier that is used to access criminal history information;
 - (f) "FBI" means the Federal Bureau of Investigation within the United States Department of Justice;
 - (g) "login id" means a unique identifier in UCJIS for a user or non-user;

(h) "misuse" means the access, use, disclosure, or dissemination of records for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity;

(i) "NCIC" means the National Crime Information Center;

(j) "non-user" means a person working for or with an agency, who does not have direct access to UCJIS but has indirect access to records, including individuals who may:

(i) access computer systems or programs used to access UCJIS files; or

(ii) have unrestricted access to a location containing UCJIS records or a computer with UCJIS access;

(k) "ORI" means originating agency identifier;

(l) "provider" means a law enforcement agency as defined in Subsection 53-1-102(1)(c), the Utah Attorney General's Office, a county attorney's office, a district attorney's office, or a city prosecutor's office;

(m) "records" means records created, maintained, or to which access is granted by the bureau, including criminal history information;

(n) "right of access program" means a program established under Subsection 53-10-108([8]2) in which a provider makes an individual's UC[€]H and warrant of arrest information available to the subject of the record;

(o) "TAC" means an agency's terminal agency coordinator;

(p) "UC[€]H" means Utah [~~Computerized~~] Criminal History;

(q) "UCJIS" means Utah Criminal Justice Information System, which includes the Criminal Justice Information System; and

(r) "user" means a person working for or with an agency who has direct access to UCJIS or who obtains UCJIS records from a person who has direct access.

R722-900-4. Direct Access to UCJIS for Agencies.

(1) An agency seeking direct access to UCJIS shall submit a completed Criminal Justice Agency Application Packet to the bureau.

(2)(a) The bureau shall submit the agency's information to the FBI, which shall determine whether the agency meets the requirements for access to CJIS records established by the FBI.

(b) If the FBI determines the agency is entitled to access any CJIS records, the FBI shall assign the agency an ORI and the bureau shall notify the agency in writing what records it may access on UCJIS using the assigned ORI.

(c)(i) If the FBI determines that the agency is not entitled to access records on CJIS, the bureau shall notify the agency of the FBI's decision and refer the agency to the agencies whose records are available on UCJIS to determine if the agency may have access to those records.

(ii) If the agency is granted access to any records on UCJIS, the bureau shall assign the agency an ORI and notify the agency in writing which records the agency may access using that ORI.

(iii) If the agency is not entitled to access any records on UCJIS, the bureau shall notify the agency in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Within 30 days after an agency is granted access to records on UCJIS, it shall submit the following documents to the bureau:

(i) a Criminal Justice Agency Agreement, signed by the agency administrator; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for the TAC, which shall be retained in the FBI Rap Back System in accordance with Subsection 53-10-108(14).

(b) The bureau shall conduct a fingerprint-based criminal history background check of the TAC.

(c) If the bureau determines that the TAC meets all the requirements for access to UCJIS, the TAC shall complete the new TAC orientation training provided by the bureau within six months.

(d) If the bureau determines that the TAC does not meet the requirements for access to UCJIS, the bureau shall notify the agency and the TAC in writing including notice of the right to appeal pursuant to R722-900-10.

(4)(a) The agency TAC shall conduct a criminal history check using the name and date of birth of each user or non-user at the agency.

(b) If the criminal history check indicates that the user or non-user does not have any criminal history, the TAC shall create an account on UCJIS and assign the user or non-user a login id.

(c) Within 30 days of assigning a login id to a user or non-user, the TAC shall submit to the bureau:

(i) a UCJIS User Agreement for each user and non-user; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for all users and non-users employed at the agency, which shall be retained in the FBI Rap Back System in accordance with Subsection 53-10-108(14).

(d) The bureau shall conduct a fingerprint-based criminal history background check for all users and non-users employed at the agency.

(e) If the bureau determines that a user or non-user meets the requirements for access to CJIS, the bureau shall notify the TAC that the user or non-user has been approved.

(f) If the bureau determines a user or non-user does not meet the requirements for access to CJIS, the bureau shall notify the user or non-user, the TAC, and the agency administrator in writing which includes the right to appeal pursuant to R722-900-10.

(5)(a) Within six months of assigning a login id to a user or non-user, the TAC shall train the user or non-user in accordance with the BCI Operations Manual.

(b) Upon completion of the training, the TAC shall administer a test to the users and submit to the bureau a signed testing agreement form from each user indicating that the user passed all of the required training and testing.

(6)(a) The TAC shall attend the annual TAC training meeting and provide updates to all users and non-user at the agency based on the training.

(b) The TAC shall be responsible for ensuring that all users or non-users at the agency complete all training required by the bureau.

(c) The TAC shall be responsible for ensuring that all users at the agency complete all re-testing required by the bureau.

(d) The bureau may suspend or revoke a TAC's, user's, non-user's access to records if the TAC, user, or non-user fails to complete the required training or testing.

R722-900-5. Access for Entities.

(1)(a) An entity seeking access to criminal background check information for employment background checks or other screening purposes shall submit a completed Qualified Entity Application Packet to the bureau, which includes the following:

- (i) a Qualified Entity Application Form;
- (ii) documentation that it is a business, organization, or governmental entity that is qualified to access criminal background check information;
- (iii) a description of why the entity is seeking to conduct employment background checks or other screenings;
- (iv) billing information; and
- (v) contact information for:
 - (A) the entity's administrator; and
 - (B) a point of contact.

(2)(a) The bureau shall review the entity's application to determine whether the entity meets the requirements for access to criminal background check information found in state or federal law.

(b) The bureau may request additional documentation from the entity to verify whether the entity is qualified to access criminal history information.

(c) If the bureau determines that an entity is qualified to access criminal background check information, it shall notify the entity in writing and assign it an entity id.

(d) If the bureau determines the entity is not qualified to access criminal background check information, the bureau shall notify the entity of the bureau's decision in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Once an entity has been granted access to criminal background check information, it shall submit the following documents to the bureau:

- (i) a Qualified Entity Agreement, signed by the entity administrator; and
- (ii) a signed Qualified Entity Employee Agreement for each employee of the entity who will have access to criminal background check information.

(b) Any employee of the entity who has access to criminal background check information shall successfully complete all training and testing required by the bureau.

(c) The bureau may suspend or revoke access to criminal background check information if an employee of an entity fails to complete the required training and testing.

R722-900-6. Individual Right of Access.

(1) An individual may review his or her own criminal history record information contained in a UC[€]H, by submitting a completed Criminal History Record Application to the bureau along with:

- (a) a set of fingerprints which have been verified with photo identification at the time the fingerprints were taken;
- (b) a copy of a government issued photo identification; and
- (c) payment of the processing fee required by Subsection 53-10-108([8]2)(b).

(2)(a) An individual may challenge the completeness and accuracy of the information contained in the individual's UC[€]H by submitting a completed Application to Challenge Criminal History Records to the bureau along with:

- (i) the challenge fee; and
- (ii) documentation to establish what information is missing or incorrect on the UC[€]H.

(b) The challenge process shall be an informal adjudicative proceeding under Section 63G-4-203.

(c)(i) If the bureau determines that the individual's criminal history record information is incomplete or inaccurate, the bureau shall amend the UC[€]H.

(ii) The bureau shall send the individual a letter notifying the individual of the changes made to the individual's UC[€]H and a copy of the individual's corrected UC[€]H.

(d)(i) If the bureau determines that the criminal history record information is correct, the bureau shall notify the individual in writing that the UC[€]H shall not be amended.

(ii) An individual may appeal the bureau's decision not to amend a record to district court in accordance with Section 63G-4-402.

(e) If the bureau determines that the individual seeking to challenge the information in the UC[€]H is not the subject of the record, the bureau shall notify the individual in writing.

R722-900-7. Right of Access Programs.

(1) A provider seeking to establish a right of access program shall submit a completed Right of Access Contract.

(2)(a) The bureau shall review the Right of Access Provider Contract to determine whether the provider may conduct a right of access program.

(b) The bureau may request additional information from the provider to determine whether the provider may conduct a right of access program.

(c) If the bureau determines that a provider is qualified to conduct a right of access program, it shall notify the provider in writing.

(d) If the bureau determines the provider is not qualified to conduct a right of access program, it shall notify the provider of the bureau's decision in writing.

R722-900-8. Audits.

(1)(a) All agencies and entities shall submit to audits conducted by the bureau.

(b) Upon request, an agency and entity shall complete the Pre-audit Request within 30 days from the date it is sent by the bureau.

(c) An agency and entity shall complete the Audit Survey within 30 days from the date it is sent out by the bureau.

(d) The bureau shall review the information submitted by the agency and entity to determine if the agency and entity is in compliance with applicable state and federal statutes, rules, and regulations.

(e) The bureau shall notify the agency and entity of the audit results in writing and give the agency, entity, or provider an opportunity to rectify any issues it found during the audit.

(f) The bureau may suspend or revoke an agency's access to UCJIS or an entity's access to criminal background check information if it fails to comply with the audit or rectify issues found during the audit.

R722-900-9. Misuse.

(1) Anyone who has reason to believe that records have been misused may submit a written complaint to the bureau.

(2)(a) The bureau shall conduct a review of its records to determine if there is any evidence to support the complaint.

(b) If the bureau finds evidence indicating records may have been accessed, used, disclosed, or disseminated, the bureau shall notify the agency TAC or entity point of contact and request that an internal review be conducted.

(3) The agency or entity shall be responsible for conducting an internal review to determine if there has been misuse of a record and submit its findings to the bureau within 30 days.

(4)(a) If the agency or entity determines there was misuse, the agency or entity shall submit a corrective action plan to the bureau.

(b) The bureau shall review the corrective action plan to determine if the action taken by the agency or entity was sufficient to address the misuse.

(5) If the bureau finds that an agency, entity, TAC, user, non-user, or employee of an agency or entity misused records, the bureau may:

(a) suspend or revoke the access of the agency, entity, TAC, user, non-user, or employee of ~~the~~an agency or entity; and

(b) refer the matter to the appropriate law enforcement agency for investigation and prosecution.

(6) The bureau may suspend or revoke access to records by an agency, entity, TAC, user, non-user, or employee of ~~the~~an agency or entity if the agency, entity, TAC, user, non-user, or employee of ~~the~~an agency or entity fails to comply with any terms of the signed agreement.

R722-900-10. Appeal.

(1)(a) An agency or entity denied access to records may appeal the bureau's decision by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(b) An agency or entity may appeal the bureau's decision to deny a TAC, user, or non-user access to records by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(2) A request for review shall include:

(a) a description of the grounds for review; and

(b) supporting documentation.

(3)(a) The bureau director or the director's designee shall review the request for review and issue a written decision within 30 days from the date of the appeal.

(b) If the bureau's decision to deny an agency or entity is upheld, the bureau shall notify the agency or entity of the right to appeal to the district court by complying with the requirements in Section 63G-4-402.

(c) If the bureau's decision to deny a TAC, user, or non-user is upheld, there shall be no further right of appeal.

KEY: access to records, UCJIS, criminal justice agencies, qualified entities

Date of Enactment or Last Substantive Amendment: ~~[August 21, 2013]~~**2015**

Notice of Continuation: April 10, 2013

Authorizing, and Implemented or Interpreted Law: 53-10-102; 53-10-108

Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-910
Non-Reportable Traffic Offenses

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39893

FILED: 10/29/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures regarding the collection and dissemination of non-reportable traffic offenses.

SUMMARY OF THE RULE OR CHANGE: This new rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses in the Utah Criminal History (UCH) database.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-10-102 and Subsection 53-10-104(13) and Subsection 77-40-102(11)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. This proposed rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses in the Utah Criminal History (UCH) database. Thus, no aggregate cost or savings to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government. This proposed rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses in the Utah Criminal History (UCH) database. Thus, no aggregate cost or savings to local government is anticipated.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. This proposed rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses in the Utah Criminal History (UCH) database. Thus, no aggregate cost or savings to small businesses is anticipated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This proposed rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses in the Utah Criminal History (UCH) database. Thus, no aggregate cost or savings to persons other than small businesses, businesses, or local government entities is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs. As this rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses in the Utah Criminal History (UCH) database, there are no compliance costs for affected persons addressed in the cost information above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this new rule and found no anticipated fiscal impact on business.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-910. Non-Reportable Traffic Offenses.

R722-910-1. Purpose.

The purpose of this rule is to establish procedures regarding the collection and dissemination of non-reportable traffic offenses.

R722-910-2. Authority.

This rule is authorized by Subsection 53-10-104(13).

R722-910-3. Definitions.

(1) Terms used in this rule are defined in Section 53-10-102.

(2) In addition:

(a) "traffic offense" has the same meaning as defined in Subsection 77-40-102(10).

R722-910-4. Dissemination of Criminal History Record Information.

(1) The division shall collect and disseminate criminal history record information in accordance with Utah Code Ann. Section 53-10-101 et seq., except when it is information corresponding to a non-reportable traffic offense as defined in Subsection 77-40-102(11).

(2) A law enforcement agency is not required to submit fingerprints in connection with any offense that meets the definition of a non-reportable traffic offense as provided in Section 53-10-207.

KEY: criminal offenses, fingerprints, non-reportable offenses

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 53-10-104(13); 53-10-102; 77-40-102(11)

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.

Heritage and Arts, Library **R458-2** Public Library Online Access for Eligibility to Receive Public Funds

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39853
FILED: 10/20/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 9-7-213(4) authorizes the rule to implement and administer the standards for the public library online access policy required in Section 9-7-215.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No legislation has changed to impact the rule. The rule does not require amendment or nonsubstantive change. Therefore, this rule should be continued.

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

ROOM A
250 N 1950 W
SALT LAKE CITY, UT 84116-7901
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Roholt by phone at 801-715-6700, by FAX at 801-715-6767, or by Internet E-mail at lroholt@utah.gov

AUTHORIZED BY: Donna Morris, Director

EFFECTIVE: 10/20/2015

Public Service Commission, Administration **R746-341** Lifeline Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39851
FILED: 10/19/2015

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 establishes how the Public Service Commission carries out its duties under Section 214 of the federal Communications Act to oversee Lifeline telecommunications service enrollment. Under Section 54-8b-2, access to Lifeline service is part of "basic residential service."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2014 three amendments were made to Rule R746-341: 1) the 05/20/2014 rule amendment was necessary to reflect changes in federal Lifeline program rules and procedures and changes to the Public Service Commission's contract with the Department of Workforce Services for Lifeline program administration; 2) the 08/28/2014 rule amendment was necessary to address errors, consistency, and clarification issues associated with the prior rule amendment; and 3) the 11/06/2014 rule amendment was necessary to address errors and consistency issues associated with the prior rule amendment. The Division of Public Utilities, Office of Consumer Services, AT&T, Utah Rural Telecom Association, CenturyLink and i-Wireless commented on the amendments above. Their comments addressed errors and clarification on eligibility requirements, the responsible agency, duties of responsible agency, state lifeline features, reporting requirements, definition of applicant, and definition of lifeline. The Public Service Commission held a technical conference and then issued a Notice of Additional Comment Period. Rule R746-341 went into effect on 01/07/2015.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets out eligibility, service, and funding requirements. This rule must be continued in order to maintain the Lifeline program for low-income customers.

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:
 ♦ Michael Hammer by phone at 801-530-6729, or by Internet E-mail at michaelhammer@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

AUTHORIZED BY: Melanie Reif, Administrative Law Judge

EFFECTIVE: 10/19/2015

**Public Service Commission,
 Administration
 R746-407
 Annualization of Test-Year Data**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 39852
 FILED: 10/19/2015**

**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 pertains to Subsection 54-4-4(3) which describes the Public Service Commission's use of test year data to set just and reasonable utility rates. The rule provides direction on how test year data may be adjusted to reflect partial period effects of test year events.

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 commission has received no written comments since the last five-year review in 2010.

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 will enable the Commission to more accurately coordinate a utility's rates with the utility's anticipated revenues and costs by recognizing that some of the conditions which arise during a test period are ongoing and must be spread over the entire period. Because of the use of test period operations as a measure of future operations to establish future rates, the need to focus on the quality of the test period data continues to be necessary, and therefore, this rule should be continued.

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:
 ♦ Michael Hammer by phone at 801-530-6729, or by Internet E-mail at michaelhammer@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

AUTHORIZED BY: Jordan White, Legal Counsel

EFFECTIVE: 10/19/2015

**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).

**Money Management Council,
Administration**

R628-12

**Certification of Qualified Depositories
for Public Funds**

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 39899

FILED: 10/30/2015

EXTENSION REASON AND NEW DEADLINE: The Council chair has resigned and the remaining Council members are fairly new. The Council has been dealing with several issues that are taking more time to work through and they haven't been able to give the rules the in-depth review that is needed. New deadline is 02/29/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Kirt Slaugh, Chair

EFFECTIVE: 10/30/2015

**Money Management Council,
Administration**

R628-13

Collateralization of Public Funds

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 39900

FILED: 10/30/2015

EXTENSION REASON AND NEW DEADLINE: The Council chair has resigned and the remaining Council members are fairly new. The Council has been dealing with several issues that are taking more time to work through and they haven't been able to give the rules the in-depth review that is needed. New deadline is 03/06/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Kirt Slaugh, Chair

EFFECTIVE: 10/30/2015

**Money Management Council,
Administration**

R628-16

Certification as a Dealer

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 39901

FILED: 10/30/2015

EXTENSION REASON AND NEW DEADLINE: The Council chair has resigned and the remaining Council members are fairly new. The Council has been dealing with several issues that are taking more time to work through and they haven't been able to give the rules the in-depth review that is needed. New deadline is 03/02/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Kirt Slaugh, Chair

EFFECTIVE: 10/30/2015

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

Alcoholic Beverage Control

Administration
No. 39474 (R&R): R81-7. Single Event Permits
Published: 07/15/2015
Effective: 11/02/2015

No. 39474 (CPR): R81-7. Single Event Permits
Published: 09/15/2015
Effective: 11/02/2015

No. 39475 (REP): R81-10B. Temporary Beer Event Permits
Published: 07/15/2015
Effective: 11/02/2015

Commerce

Occupational and Professional Licensing
No. 39630 (AMD): R156-1. General Rule of the Division of Occupational and Professional Licensing
Published: 09/15/2015
Effective: 10/22/2015

No. 39609 (AMD): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule
Published: 09/15/2015
Effective: 10/22/2015

Real Estate

No. 39571 (AMD): R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules
Published: 09/01/2015
Effective: 10/22/2015

Health

Administration
No. 39574 (R&R): R380-200. Patient Safety Sentinel Event Reporting
Published: 09/01/2015
Effective: 12/30/2015

Health Care Financing, Coverage and Reimbursement Policy
No. 39453 (AMD): R414-61-2. Incorporation by Reference
Published: 07/15/2015
Effective: 11/02/2015

No. 39629 (AMD): R414-307. Eligibility for Home and Community-Based Services Waivers
Published: 09/15/2015
Effective: 11/01/2015

Human Services

Administration, Administrative Services, Licensing
No. 39617 (AMD): R501-12. Foster Care Services
Published: 09/15/2015
Effective: 10/23/2015

Child and Family Services

No. 39625 (AMD): R512-11. Accommodation of Moral and Religious Beliefs and Culture
Published: 09/15/2015
Effective: 10/22/2015

No. 39626 (AMD): R512-201. Child Protective Services, Investigation Services
Published: 09/15/2015
Effective: 10/22/2015

No. 39627 (AMD): R512-202. Child Protective Services, General Allegation Categories
Published: 09/15/2015
Effective: 10/22/2015

NOTICES OF RULE EFFECTIVE DATES

Insurance

Title and Escrow Commission

No. 39631 (AMD): R592-11. Title Insurance Producer Annual and Controlled Business Reports
Published: 09/15/2015
Effective: 11/02/2015

No. 39632 (AMD): R592-15. Submission of a Schedule of Minimum Charges for Escrow Services
Published: 09/15/2015
Effective: 11/02/2015

Natural Resources

Parks and Recreation

No. 39624 (AMD): R651-206. Carrying Passengers for Hire
Published: 09/15/2015
Effective: 10/22/2015

Pardons (Board Of)

Administration

No. 39606 (NEW): R671-314. Compassionate Release
Published: 09/15/2015
Effective: 10/22/2015

Tax Commission

Auditing

No. 39618 (AMD): R865-13G-18. Definition of Statewide Average Rack Price of a Gallon of Motor Fuel Pursuant to Utah Code Ann. Sections 59-13-201 and 59-13-210
Published: 09/15/2015
Effective: 10/22/2015

Motor Vehicle Enforcement

No. 39619 (AMD): R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210
Published: 09/15/2015
Effective: 10/22/2015

No. 39620 (AMD): R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210
Published: 09/15/2015
Effective: 10/22/2015

No. 39621 (AMD): R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209
Published: 09/15/2015
Effective: 10/22/2015

Property Tax

No. 39622 (AMD): R884-24P-33. 2015 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301
Published: 09/15/2015
Effective: 10/22/2015

No. 39623 (AMD): R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004
Published: 09/15/2015
Effective: 10/22/2015

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, 2015 through November 02, 2015. 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>Administrative Rules</u>					
R15-1	Administrative Rule Hearings	39726	5YR	09/11/2015	2015-19/113
R15-2	Public Petitioning for Rulemaking	39727	5YR	09/11/2015	2015-19/113
R15-3	Definitional Clarification of Administrative Rule	39728	5YR	09/11/2015	2015-19/114
R15-4	Administrative Rulemaking Procedures	39729	5YR	09/11/2015	2015-19/115
R15-5	Administrative Rules Adjudicative Proceedings	39730	5YR	09/11/2015	2015-19/115
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	39033	R&R	03/03/2015	2015-2/4
R23-1-1504	Performance Evaluation	39642	NSC	09/30/2015	Not Printed
R23-2	Procurement of Architect-Engineer Services	39061	REP	03/16/2015	2015-3/4
R23-7	State Construction Contracts and Drug and Alcohol Testing	39482	5YR	06/30/2015	2015-14/139
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	39301	AMD	06/22/2015	2015-10/6
R25-10	State Entities Posting of Financial Information to the Utah Public Finance Website	39360	AMD	07/08/2015	2015-11/4
R25-25-7	Travel-Related Reimbursements for State Employees	39160	AMD	04/21/2015	2015-6/10
<u>Purchasing and General Services</u>					
R33-1-1	Definitions	38974	AMD	01/28/2015	2014-24/4
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39327	AMD	06/23/2015	2015-10/11
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39472	AMD	08/21/2015	2015-14/6
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39523	NSC	08/24/2015	Not Printed
R33-6-101	Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction	38975	AMD	01/28/2015	2014-24/5
R33-6-109	Only One Bid Received	39366	AMD	07/09/2015	2015-11/5
R33-7	Request for Proposals	38976	AMD	01/28/2015	2014-24/6
R33-7	Request for Proposals	39513	NSC	07/30/2015	Not Printed
R33-7-702	Only One Proposal Received	39365	AMD	07/09/2015	2015-11/6
R33-7-702	Only One Proposal Received	39432	AMD	08/07/2015	2015-13/6
R33-8	Exceptions to Procurement Requirements	39328	AMD	06/23/2015	2015-10/15
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	38977	AMD	01/28/2015	2014-24/9
R33-16	Controversies and Protests	39470	AMD	08/21/2015	2015-14/9

R33-16-401	Protest Officer May Correct Noncompliance, Errors and Discrepancies	38978	AMD	01/28/2015	2014-24/12
R33-26	State Surplus Property	39084	NSC	01/28/2015	Not Printed
R33-26	State Surplus Property	39271	AMD	06/10/2015	2015-9/4
R33-26-202	Information Technology Equipment	39042	AMD	03/31/2015	2015-2/33
R33-26-202	Disposal of State-Owned Surplus Electronic Data Devices	39454	AMD	08/21/2015	2015-14/11
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	39400	AMD	07/31/2015	2015-11/7
R35-2	Declining Appeal Hearings	39401	AMD	07/31/2015	2015-11/9
R35-4	Compliance with State Records Committee Decisions and Orders	39402	AMD	07/31/2015	2015-11/10
R35-5	Subpoenas Issued by the Records Committee	39403	AMD	07/31/2015	2015-11/11
R35-6	Expedited Hearing	39404	AMD	07/31/2015	2015-11/12
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-1	Public Petitions for Declaratory Rulings	39633	EXD	09/01/2015	2015-18/137
R51-1	Public Petitions for Declaratory Rulings	39636	EMR	09/02/2015	2015-19/109
<u>Animal Industry</u>					
R58-1	Admission, Identification, and Inspection of Livestock, Poultry and other Animals	39423	AMD	08/12/2015	2015-13/7
R58-2	Disease, Inspections, and Quarantines	39422	AMD	08/12/2015	2015-13/14
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	39075	5YR	01/13/2015	2015-3/67
R58-11	Slaughter of Livestock and Poultry	39073	5YR	01/13/2015	2015-3/67
R58-12	Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments	39573	5YR	08/12/2015	2015-17/97
R58-13	Custom Exempt Slaughter	39614	EXD	08/25/2015	2015-18/137
R58-13	Custom Exempt Slaughter	39616	EMR	08/25/2015	2015-18/131
R58-15	Collection of Annual Fees for the Wildlife Damage Prevention Act	39602	5YR	08/13/2015	2015-17/97
R58-17	Aquaculture and Aquatic Animal Health	39074	5YR	01/13/2015	2015-3/68
R58-21	Trichomoniasis	39086	5YR	01/21/2015	2015-4/37
R58-22	Equine Infectious Anemia (EIA)	39424	AMD	08/12/2015	2015-13/15
<u>Chemistry Laboratory</u>					
R63-1	Fee Schedule	39611	5YR	08/24/2015	2015-18/133
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	39237	5YR	03/24/2015	2015-8/33
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	39612	5YR	08/24/2015	2015-18/133
R68-2	Utah Commercial Feed Act Governing Feed	39471	5YR	06/29/2015	2015-14/139
R68-6	Utah Nursery Act	39548	5YR	07/29/2015	2015-16/79
R68-10	Quarantine Pertaining to the European Corn Borer	39507	5YR	07/10/2015	2015-15/31
R68-12	Quarantine Pertaining to Mint Wilt	39408	5YR	05/21/2015	2015-12/33
R68-22	Industrial Hemp Research	39148	NEW	04/22/2015	2015-6/14
<u>Regulatory Services</u>					
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R930-8	Utility Relocations Required by Highway Projects	39297	CPR	08/24/2015	2015-14/135
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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>abortion</u> Health, Health Care Financing, Coverage and Reimbursement Policy	39341	R414-1B	AMD	07/01/2015	2015-10/32
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Commerce, Occupational and Professional Licensing	39092	R156-24b-302b	AMD	03/24/2015	2015-4/9
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physical therapists

Commerce, Occupational and Professional Licensing	39092	R156-24b-302b	AMD	03/24/2015	2015-4/9
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physical therapy

Commerce, Occupational and Professional Licensing	39092	R156-24b-302b	AMD	03/24/2015	2015-4/9
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physician assistants

Commerce, Occupational and Professional Licensing	39177	R156-70a-302	AMD	05/27/2015	2015-7/3
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	39076	R309-500	AMD	07/15/2015	2015-3/16
	39076	R309-500	CPR	07/15/2015	2015-11/166

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	39408	R68-12	5YR	05/21/2015	2015-12/33

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	39166	R307-110-28	AMD	06/04/2015	2015-7/15
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	39116	R307-206	5YR	02/05/2015	2015-5/105
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	39119	R307-306	5YR	02/05/2015	2015-5/107
	39122	R307-310	5YR	02/05/2015	2015-5/109
	38997	R307-311	NEW	03/05/2015	2015-1/22

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	39166	R307-110-28	AMD	06/04/2015	2015-7/15
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	39165	R414-303-8	AMD	05/08/2015	2015-7/26	
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	39820	R251-712	5YR	10/13/2015	2015-21/109	
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	39368	R156-63a	AMD	07/23/2015	2015-11/22	
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